

Calendar No. 238

100TH CONGRESS
1ST SESSION

S. 661

[Report No. 100-109]

To amend titles XI, XVIII, and XIX of the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions relating to those programs.

IN THE SENATE OF THE UNITED STATES

MARCH 6, 1987

Mr. HEINZ (for himself, Mr. GLENN, Mr. MITCHELL, Mr. DURENBERGER, Mr. BRADLEY, Mr. ROCKEFELLER, Mr. MELCHER, and Mr. HECHT) introduced the following bill; which was read twice and referred to the Committee on Finance

JULY 14 (legislative day, JUNE 23), 1987

Reported by Mr. BENTSEN, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend titles XI, XVIII, and XIX of the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions relating to those programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF
2 CONTENTS.

3 (a) SHORT TITLE.—This Act may be cited as the
4 “Medicare and Medicaid Patient and Program Protection Act
5 of 1987”.

6 (b) AMENDMENTS TO THE SOCIAL SECURITY ACT.—
7 Except as otherwise specifically provided, whenever in this
8 Act an amendment is expressed in terms of an amendment to
9 or repeal of, a section or other provision, the reference shall
10 be considered to be made to that section or other provision of
11 the Social Security Act.

12 (c) TABLE OF CONTENTS.—The table of contents of
13 this Act is as follows:

- Sec. 1. Short title; references in Act; table of contents.
- Sec. 2. Exclusion from medicare and State health care programs.
- Sec. 3. Civil monetary penalties.
- Sec. 4. Criminal penalties for acts involving medicare and State health care programs.
- Sec. 5. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers.
- Sec. 6. Obligation of health care practitioners and providers.
- Sec. 7. Exclusion under the medicaid program.
- Sec. 8. Miscellaneous and conforming amendments.
- Sec. 9. Clarification of medicaid moratorium provisions of Deficit Reduction Act of 1984.
- Sec. 10. Limitation of liability of medicare beneficiaries with respect to services furnished by excluded individuals and entities.
- Sec. 11. Definition of person with ownership or control interest.
- Sec. 12. Conditional approval of renal dialysis facilities.
- Sec. 13. Amendment relating to fraud involving medicare supplemental insurance.
- Sec. 14. Standards for anti-kickback provisions.
- Sec. 15. Effective dates.

1 SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH
2 CARE PROGRAMS.

3 Section 1128 (42 U.S.C. 1320a-7) is amended to read
4 as follows:

5 "EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES
6 FROM PARTICIPATION IN MEDICARE AND STATE
7 HEALTH CARE PROGRAMS

8 "SEC. 1128. (a) MANDATORY EXCLUSION.—The Sec-
9 retary shall exclude the following individuals and entities
10 from participation in any program under title XVIII and
11 shall direct that the following individuals and entities be ex-
12 cluded from participation in any State health care program
13 (as defined in subsection (h)):

14 "(1) CONVICTION OF PROGRAM-RELATED
15 CRIMES.—Any individual or entity that has been con-
16 victed of a criminal offense related to the delivery of
17 an item or service under title XVIII or under any
18 State health care program.

19 "(2) CONVICTION RELATING TO PATIENT
20 ABUSE.—Any individual or entity that has been con-
21 victed, under Federal or State law, of a criminal of-
22 fense relating to neglect or abuse of patients in connec-
23 tion with the delivery of a health care item or service.

24 "(b) PERMISSIVE EXCLUSION.—The Secretary may ex-
25 clude the following individuals and entities from participation
26 in any program under title XVIII and may direct that the

CMS Library
C2-07-13
7500 Security Blvd.
Baltimore, Maryland 21244

1 following individuals and entities be excluded from participa-
2 tion in any State health care program:

3 “(1) CONVICTION RELATING TO FRAUD.—Any
4 individual or entity that has been convicted, under
5 Federal or State law, in connection with the delivery
6 of a health care item or service or with respect to any
7 act or omission in a program operated by or financed
8 in whole or in part by any Federal, State, or local gov-
9 ernment agency, of a criminal offense relating to fraud,
10 theft, embezzlement, breach of fiduciary responsibility,
11 or other financial misconduct.

12 “(2) CONVICTION RELATING TO OBSTRUCTION
13 OF AN INVESTIGATION.—Any individual or entity that
14 has been convicted, under Federal or State law, in
15 connection with the interference with or obstruction of
16 any investigation into any criminal offense described in
17 paragraph (1) or in subsection (a).

18 “(3) CONVICTION RELATING TO CONTROLLED
19 SUBSTANCE.—Any individual or entity that has been
20 convicted, under Federal or State law, of a criminal of-
21 fense relating to the unlawful manufacture, distribution,
22 prescription, or dispensing of a controlled substance.

23 “(4) LICENSE REVOCATION OR SUSPENSION.—
24 Any individual or entity—

1 “(A) whose license to provide health care
2 has been revoked or suspended by any State li-
3 censing authority, or who otherwise lost such a li-
4 cense, for reasons bearing on the individual's or
5 entity's professional competence, professional per-
6 formance, or financial integrity, or

7 “(B) who surrendered such a license while a
8 formal disciplinary proceeding was pending before
9 such an authority and the proceeding concerned
10 the individual's or entity's professional compe-
11 tence, professional performance, or financial in-
12 tegrity.

13 “(5) ~~EXCLUSION OR SUSPENSION UNDER FEDER-~~
14 ~~AL OR STATE HEALTH CARE PROGRAM.~~—Any indi-
15 vidual or entity which has been suspended or excluded
16 from participation, or otherwise sanctioned, under—

17 “(A) any Federal program, including pro-
18 grams of the Department of Defense or the Vet-
19 erans' Administration, involving the provision of
20 health care, or

21 “(B) a State health care program,
22 for reasons bearing on the individual's or entity's pro-
23 fessional competence, professional performance, or fi-
24 nancial integrity.

1 “(6) CLAIMS FOR EXCESSIVE CHARGES OR UN-
 2 NECESSARY SERVICES AND FAILURE OF CERTAIN OR-
 3 GANIZATIONS TO FURNISH MEDICALLY NECESSARY
 4 SERVICES.—Any individual or entity that the Secre-
 5 tary determines—

6 “(A) has submitted or caused to be submitted
 7 bills or requests for payment (where such bills or
 8 requests are based on charges or cost) under title
 9 XVIII or a State health care program containing
 10 charges (or, in applicable cases, requests for pay-
 11 ment of costs) for items or services furnished sub-
 12 stantially in excess of such individual's or entity's
 13 usual charges (or, in applicable cases, substantial-
 14 ly in excess of such individual's or entity's costs)
 15 for such items or services, unless the Secretary
 16 finds there is good cause for such bills or requests
 17 containing such charges or costs;

18 “(B) has furnished or caused to be furnished
 19 items or services to patients (whether or not eligi-
 20 ble for benefits under title XVIII or under a State
 21 health care program) substantially in excess of the
 22 needs of such patients or of a quality which fails
 23 to meet professionally recognized standards of
 24 health care;

25 “(C) is—

1 “(i) a health maintenance organization
2 (as defined in section 1903(m)) providing
3 items and services under a State plan ap-
4 proved under title XIX, or

5 “(ii) an entity furnishing services under
6 a waiver approved under section 1915(b)(1),
7 and has failed substantially to provide medically
8 necessary items and services that are required
9 (under law or the contract with the State under
10 title XIX) to be provided to individuals covered
11 under that plan or waiver, if the failure has ad-
12 versely affected (or has a substantial likelihood of
13 adversely affecting) these individuals; or

14 “(D) is an entity providing items and serv-
15 ices as an eligible organization under a risk-shar-
16 ing contract under section 1876 and has failed
17 substantially to provide medically necessary items
18 and services that are required (under law or such
19 contract) to be provided to individuals covered
20 under the risk-sharing contract, if the failure has
21 adversely affected (or has a substantial likelihood
22 of adversely affecting) these individuals.

23 “(7) FRAUD, KICKBACKS, AND OTHER PROHIBIT-
24 ED ACTIVITIES.—Any individual or entity that the

1 Secretary determines has committed an act which is
2 described in section 1128A or section 1128B.

3 ~~“(8) ENTITIES CONTROLLED BY A SANCTIONED~~
4 ~~INDIVIDUAL.—Any entity with respect to which the~~
5 ~~Secretary determines that a person—~~

6 ~~“(A)(i) with an ownership or control interest~~
7 ~~(as defined in section 1124(a)(3)) in that entity, or~~

8 ~~“(ii) who is an officer, director, agent, or~~
9 ~~managing employee (as defined in section 1126(b))~~
10 ~~of that entity—~~

11 ~~is a person—~~

12 ~~“(B)(i) who has been convicted of any offense~~
13 ~~described in subsection (a) or in paragraph (1), (2),~~
14 ~~or (3) of this subsection;~~

15 ~~“(ii) against whom a civil monetary penalty~~
16 ~~has been assessed under section 1128A; or~~

17 ~~“(iii) who has been excluded from participa-~~
18 ~~tion under a program under title XVIII or under~~
19 ~~a State health care program.~~

20 ~~“(9) FAILURE TO DISCLOSE REQUIRED INFORMA-~~
21 ~~TION.—Any entity that did not fully and accurately~~
22 ~~make any disclosure required by section 1124 or sec-~~
23 ~~tion 1126.~~

24 ~~“(10) FAILURE TO SUPPLY REQUESTED INFOR-~~
25 ~~MATION ON SUBCONTRACTORS AND SUPPLIERS.—Any~~

1 disclosing entity (as defined in section 1124(a)(2)) that
2 fails to supply (within such period as may be specified
3 by the Secretary in regulations) upon request specifi-
4 cally addressed to the entity by the Secretary or by the
5 State agency administering or supervising the adminis-
6 tration of a State health care program—

7 “(A) full and complete information as to the
8 ownership of a subcontractor (as defined by the
9 Secretary in regulations) with whom the entity
10 has had, during the previous 12 months, business
11 transactions in an aggregate amount in excess of
12 \$25,000, or

13 “(B) full and complete information as to any
14 significant business transactions (as defined by the
15 Secretary in regulations), occurring during the
16 five-year period ending on the date of such re-
17 quest, between the entity and any wholly owned
18 supplier or between the entity and any subcon-
19 tractor.

20 “(11) FAILURE TO SUPPLY PAYMENT INFORMA-
21 TION.—Any individual or entity furnishing items or
22 services for which payment may be made under title
23 XVIII or a State health care program that fails to
24 provide such information as the Secretary or the ap-
25 propriate State agency finds necessary to determine

1 whether such payments are or were due and the
2 amounts thereof, or has refused to permit such exami-
3 nation of its records by or on behalf of the Secretary or
4 that agency as may be necessary to verify such
5 information.

6 “(12) FAILURE TO GRANT IMMEDIATE
7 ACCESS.—Any individual or entity that fails to grant
8 immediate access, upon reasonable request (as defined
9 by the Secretary in regulations) to any of the
10 following:

11 “(A) To the Secretary, or to the agency used
12 by the Secretary, for the purpose specified in the
13 first sentence of section 1864(a) (relating to com-
14 pliance with conditions of participation or pay-
15 ment).

16 “(B) To the Secretary or the State agency,
17 to perform the reviews and surveys required
18 under State plans under paragraphs (26), (31),
19 and (33) of section 1902(a) and under section
20 1903(g).

21 “(C) To the Inspector General of the De-
22 partment of Health and Human Services, for the
23 purpose of reviewing records, documents, and
24 other data necessary to the performance of the
25 statutory functions of the Inspector General.

1 “(D) To a State medicaid fraud control unit
2 (as defined in section 1903(q)), for the purpose of
3 conducting activities described in that section.

4 ~~“(13) FAILURE TO TAKE CORRECTIVE~~
5 ~~ACTION.—Any hospital that fails to comply substan-~~
6 ~~tially with a corrective action required under section~~
7 ~~1886(f)(2)(B).~~

8 ~~“(14) DEFAULT ON HEALTH EDUCATION LOAN~~
9 ~~OR SCHOLARSHIP OBLIGATIONS.—Any individual who~~
10 the Secretary determines is in default on repayments of
11 scholarship obligations or loans in connection with
12 health professions education made or secured, in whole
13 or in part, by the Secretary and with respect to whom
14 the Secretary has taken all reasonable steps available
15 to the Secretary to secure repayment of such obliga-
16 tions or loans, except that (A) the Secretary shall not
17 exclude pursuant to this paragraph a physician who is
18 the sole community physician or sole source of essen-
19 tial specialized services in a community if a State re-
20 quests that the physician not be excluded, and (B) the
21 Secretary shall take into account, in determining
22 whether to exclude any other physician pursuant to
23 this paragraph, access of beneficiaries to physician
24 services for which payment may be made under title
25 XVIII or XIX.

1 “(e) NOTICE, EFFECTIVE DATE, AND PERIOD OF EX-
 2 CLUSION.—(1) An exclusion under this section or under sec-
 3 tion 1128A shall be effective at such time and upon such
 4 reasonable notice to the public and to the individual or entity
 5 excluded as may be specified in regulations consistent with
 6 paragraph (2).

7 “(2)(A) Except as provided in subparagraph (B), such an
 8 exclusion shall be effective with respect to services furnished
 9 to an individual on or after the effective date of the exclusion.

10 “(B) Unless the Secretary determines that the health
 11 and safety of individuals receiving services warrants the ex-
 12 clusion taking effect earlier, an exclusion shall not apply to
 13 payments made under title XVIII or under a State health
 14 care program for—

15 “(i) inpatient institutional services furnished to an
 16 individual who was admitted to such institution before
 17 the date of the exclusion, or

18 “(ii) home health services and hospice care fur-
 19 nished to an individual under a plan of care established
 20 before the date of the exclusion,
 21 until the passage of 30 days after the effective date of the
 22 exclusion.

23 “(3)(A) The Secretary shall specify, in the notice of ex-
 24 clusion under paragraph (1) and the written notice under sec-
 25 tion 1128A, the minimum period (or, in the case of an exclu-

1 sion of an individual under subsection (b)(12), the period) of
2 the exclusion.

3 “(B) In the case of an exclusion under subsection (a),
4 the minimum period of exclusion shall be not less than five
5 years, except that, upon the request of a State, the Secretary
6 may waive the exclusion under subsection (a)(1) in the case of
7 an individual or entity that is the sole community physician
8 or sole source of essential specialized services in a communi-
9 ty. The Secretary’s decision whether to waive the exclusion
10 shall not be reviewable.

11 “(C) In the case of an exclusion of an individual under
12 subsection (b)(12), the period of the exclusion shall be equal
13 to the sum of—

14 “(i) the length of the period in which the individ-
15 ual failed to grant the immediate access described in
16 that subsection; and

17 “(ii) an additional period, not to exceed 90 days,
18 set by the Secretary.

19 “(d) NOTICE TO STATE AGENCIES AND EXCLUSION
20 UNDER STATE HEALTH CARE PROGRAMS.—(1) Subject to
21 paragraph (3), the Secretary shall exercise the authority
22 under subsection (b) in a manner that results in an individ-
23 ual’s or entity’s exclusion from all the programs under title
24 XVIII and all the State health care programs in which the
25 individual or entity may otherwise participate.

1 “(2) The Secretary shall promptly notify each appropri-
2 ate State agency administering or supervising the administra-
3 tion of each State health care program (and, in the case of an
4 exclusion effected pursuant to subsection (a) and to which
5 section 304(a)(5) of the Controlled Substances Act may
6 apply, the Attorney General)—

7 “(A) of the fact and circumstances of each exclu-
8 sion effected against an individual or entity under this
9 section or section 1128A, and

10 “(B) of the period (described in paragraph (3)) for
11 which the State agency is directed to exclude the indi-
12 vidual or entity from participation in the State health
13 care program.

14 “(3)(A) Except as provided in subparagraph (B), the
15 period of the exclusion under a State health care program
16 under paragraph (2) shall be the same as any period of exclu-
17 sion under a program under title XVIII.

18 “(B) The Secretary may waive an individual's or enti-
19 ty's exclusion under a State health care program under para-
20 graph (2) if the Secretary receives and approves a request for
21 the waiver with respect to the individual or entity from the
22 State agency administering or supervising the administration
23 of the program.

24 “(c) NOTICE TO STATE LICENSING AGENCIES.—The
25 Secretary shall—

“(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section 1128A, of the fact and circumstances of the exclusion,

“(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy; and

“(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

“(f) NOTICE, HEARING, AND JUDICIAL REVIEW.—(1)

Any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary’s final decision after such hearing as is provided in section 205(g).

“(2) The provisions of section 205(h) shall apply with respect to this section and sections 1128A and 1156 to the same extent as it is applicable with respect to title II.

1 “(g) APPLICATION FOR TERMINATION OF EXCLU-
 2 SION.—(1) An individual or entity excluded (or directed to be
 3 excluded) from participation under this section or section
 4 1128A may apply to the Secretary, in the manner specified
 5 by the Secretary in regulations and at the end of the mini-
 6 mum period of exclusion provided under subsection (e)(3) and
 7 at such other times as the Secretary may provide, for termi-
 8 nation of the exclusion effected under this section or section
 9 1128A.

10 “(2) The Secretary may terminate the exclusion if the
 11 Secretary determines, on the basis of the conduct of the ap-
 12 plicant which occurred after the date of the notice of exclu-
 13 sion or which was unknown to the Secretary at the time of
 14 the exclusion, that—

15 “(A) there is no basis under subsection (a) or (b)
 16 or section 1128A(a) for a continuation of the exclusion,
 17 and

18 “(B) there are reasonable assurances that the
 19 types of actions which formed the basis for the original
 20 exclusion have not recurred and will not recur.

21 “(3) The Secretary shall promptly notify each appropri-
 22 ate State agency administering or supervising the administra-
 23 tion of each State health care program (and, in the case of an
 24 exclusion effected pursuant to subsection (a) and to which
 25 section 304(a)(5) of the Controlled Substances Act may

1 apply, the Attorney General) of the fact and circumstances of
2 each termination of exclusion made under this subsection.

3 “(h) DEFINITION OF STATE HEALTH CARE PRO-
4 GRAM.—For purposes of this section and sections 1128A and
5 1128B, the term ‘State health care program’ means—

6 “(1) a State plan approved under title XIX,

7 “(2) any program receiving funds under title V or
8 from an allotment to a State under such title, or

9 “(3) any program receiving funds under title XX
10 or from an allotment to a State under such title.

11 “(i) CONVICTED DEFINED.—For purposes of subsec-
12 tions (a) and (b), a physician or other individual is considered
13 to have been ‘convicted’ of a criminal offense—

14 “(1) when a judgment of conviction has been en-
15 tered against the physician or individual by a Federal,
16 State, or local court, regardless of whether there is an
17 appeal pending or whether the judgment of conviction
18 or other record relating to criminal conduct has been
19 expunged;

20 “(2) when there has been a finding of guilt
21 against the physician or individual by a Federal, State,
22 or local court;

23 “(3) when a plea of guilty or nolo contendere by
24 the physician or individual has been accepted by a
25 Federal, State, or local court; or

1 ~~“(4) when the physician or individual has entered~~
 2 ~~into participation in a first offender or other program~~
 3 ~~where judgment of conviction has been withheld.”.~~

4 **SEC. 3. CIVIL MONETARY PENALTIES.**

5 (a) **GROUND FOR IMPOSITION.**—(1) Section
 6 ~~1128A(a)(1) (42 U.S.C. 1320a-7a(a)(1))~~ is amended by strik-
 7 ing “the Secretary determines” and all that follows through
 8 “; or” and inserting “the Secretary determines—

9 ~~“(A) is for a medical or other item or service that~~
 10 ~~the person knows or has reason to know was not pro-~~
 11 ~~vided as claimed,~~

12 ~~“(B) is for a medical or other item or service and~~
 13 ~~the person knows or has reason to know the claim is~~
 14 ~~false or fraudulent,~~

15 ~~“(C) is presented for a physician’s service (or an~~
 16 ~~item or service incident to a physician’s service) by a~~
 17 ~~person who knows or has reason to know that the indi-~~
 18 ~~vidual who furnished (or supervised the furnishing of)~~
 19 ~~the service—~~

20 ~~“(i) was not licensed as a physician,~~

21 ~~“(ii) was licensed as a physician, but such li-~~
 22 ~~cence had been obtained through a misrepresenta-
 23 ~~tion of material fact (including cheating on an ex-~~
 24 ~~amination required for licensing); or~~~~

1 “(iii) represented to the patient at the time
2 the service was furnished that the physician was
3 certified in a medical specialty by a medical spe-
4 cialty board when the individual was not so certi-
5 fied, or

6 “(D) is for a medical or other item or service fur-
7 nished during a period in which the person was ex-
8 cluded under the program under which the claim was
9 made pursuant to a determination by the Secretary
10 under this section or under section 1128, 1156,
11 1160(b) (as in effect on September 2, 1982), 1862(d)
12 (as in effect on the date of the enactment of the Medi-
13 care and Medicaid Patient and Program Protection Act
14 of 1987), or 1866(b); or”.

15 (2) Section 1128A(a)(2) is amended—

16 (A) in subparagraph (B) by inserting “(or other re-
17 quirement of a State plan under title XIX)” after
18 “State agency”, and

19 (B) by inserting at the end “or (D) an agreement
20 pursuant to section 1866(a)(1)(G), or”.

21 (3) Subsection (a) of section 1128A is further
22 amended—

23 (A) by inserting after paragraph (2) and before the
24 end matter of such subsection the following new
25 paragraph:

1 “(3) gives to any person, with respect to coverage
 2 under title XVIII of inpatient hospital services subject
 3 to the provisions of section 1886, information that he
 4 knows or has reason to know is false or misleading,
 5 and that could reasonably be expected to influence the
 6 decision when to discharge such person or another in-
 7 dividual from the hospital;”, and

8 (B) in the matter following paragraph (3)—

9 (i) by inserting “(or, in cases under para-
 10 graph (3), \$15,000 for each individual with re-
 11 spect to whom false or misleading information
 12 was given)” before the period at the end of the
 13 first sentence, and

14 (ii) by adding at the end thereof the following
 15 new sentence: “In addition the Secretary may
 16 make a determination in the same proceeding to
 17 exclude the person from participation in the pro-
 18 grams under title XVIII and to direct the appro-
 19 priate State agency to exclude the person from
 20 participation in any State health care program.”.

21 (b) **STATUTE OF LIMITATION ON ACTIONS.**—Subsec-
 22 tion (e)(1) of section 1128A (as redesignated by section
 23 9313(c)(1)(D) of the Omnibus Budget Reconciliation Act of
 24 1986) is amended by adding at the end the following new
 25 sentences: “The Secretary may not initiate an action under

1 this section with respect to any claim later than six years
 2 after the date the claim was presented. The Secretary may
 3 initiate an action under this section by serving notice of the
 4 action in any manner authorized by Rule 4 of the Federal
 5 Rules of Civil Procedure.”.

6 (c) CONFORMING AMENDMENT.—Subsections (e), (d),
 7 (g), and (h) of section 1128A are each amended by striking
 8 “penalty or assessment” and inserting “penalty, assessment,
 9 or exclusion” each place it appears.

10 (d) PRO-RATED PAYMENT OF RECOVERIES TO STATE
 11 AGENCIES.—Subsection (f)(1)(A) of section 1128A is amend-
 12 ed by striking “equal to the State’s share of the amount paid
 13 by the State agency” and inserting “bearing the same pro-
 14 portion to the total amount recovered as the State’s share of
 15 the amount paid by the State agency for such claim bears to
 16 the total amount paid”.

17 (e) NOTICE TO STATE AGENCIES.—Subsection (h) of
 18 section 1128A is further amended by inserting “the appropri-
 19 ate State agency or agencies administering or supervising the
 20 administration of State health care programs (as defined in
 21 section 1128(h)),” after “professional organization,”.

22 (f) APPLICATION OF SUBPOENA POWER AND INJUNC-
 23 TIVE POWERS.—Section 1128A is further amended by
 24 adding at the end the following new subsections:

1 “(j) The provisions of subsections (d) and (e) of section
 2 205 shall apply with respect to this section to the same
 3 extent as they are applicable with respect to title II. The
 4 Secretary may delegate the authority granted by section
 5 205(d) (as made applicable to this section) to the Inspector
 6 General of the Department of Health and Human Services
 7 for purposes of any investigation under this section.

8 “(k) Whenever the Secretary has reason to believe that
 9 any person has engaged, is engaging, or is about to engage in
 10 any activity which makes the person subject to a civil mone-
 11 tary penalty under this section, the Secretary may bring an
 12 action in an appropriate district court of the United States
 13 (or, if applicable, a United States court of any territory) to
 14 enjoin such activity, or to enjoin the person from concealing,
 15 removing, encumbering, or disposing of assets which may be
 16 required in order to pay a civil monetary penalty if any such
 17 penalty were to be imposed or to seek other appropriate
 18 relief.”.

19 **SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDI-**
 20 **CARE AND STATE HEALTH CARE PROGRAMS.**

21 (a) **TECHNICAL AMENDMENTS.**—Section 1909 (42
 22 U.S.C. 1396h) is amended—

23 (1) by amending the heading to read as follows:

1 ~~“CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE~~
 2 ~~OR STATE HEALTH CARE PROGRAMS”;~~

3 (2) in subsection (a)(1), by striking “a State plan
 4 approved under this title” and inserting “a program
 5 under title XVIII or a State health care program (as
 6 defined in section 1128(h))”;

7 (3) in the matter in subsection (a) following para-
 8 graph (4), by striking “this title” the first place it ap-
 9 pears and inserting “the program”;

10 (4) in the last sentence of subsection (a), by strik-
 11 ing “this title” the first place it appears and inserting
 12 “title XIX”, and by striking “this title” the second
 13 place it appears and inserting “that title”;

14 (5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and
 15 (3)(A) of subsection (b), by striking “this title” and in-
 16 serting “title XVIII or a State health care program”
 17 each place it appears;

18 (6) in subsection (b)(3)—

19 (A) by striking “and” at the end of subpara-
 20 graph (A),

21 (B) by striking the period at the end of sub-
 22 paragraph (B) and inserting “; and”, and

23 (C) by adding at the end the following:

24 “(C) any amount paid by a vendor of goods or
 25 services to a person authorized to act as a purchasing

1 agent for a group of individuals or entities who are fur-
 2 nishing services reimbursed under title XVIII or a
 3 State health care program if—

4 “(i) the person has a written contract, with
 5 each such individual or entity, which specifies the
 6 amount to be paid the person, which amount may
 7 be a fixed amount or a fixed percentage of the
 8 value of the purchases made by each such individ-
 9 ual or entity under the contract, and

10 “(ii) in the case of an entity that is a provid-
 11 er of services (as defined in section 1861(u)), the
 12 person discloses (in such form and manner as the
 13 Secretary requires) to the entity and, upon re-
 14 quest, to the Secretary the amount received from
 15 each such vendor with respect to purchases made
 16 by or on behalf of the entity.”;

17 (7) in subsection (c), by striking “or home health
 18 agency (as those terms are employed in this title)” and
 19 inserting “home health agency, or other entity for
 20 which certification is required under title XVIII or a
 21 State health care program”; and

22 (8) in subsection (d), by striking “this title” and
 23 inserting “title XIX” each place it appears.

1 (b) CRIMINAL PENALTIES FOR PHYSICIAN MISREPRE-
2 SENTATIONS.—Subsection (a) of such section is further
3 amended—

4 (1) by striking “or” at the end of paragraph (3),

5 (2) by inserting “or” at the end of paragraph (4),

6 and

7 (3) by inserting after paragraph (4) the following
8 new paragraph:

9 “(5) presents or causes to be presented a claim
10 for a physician’s service for which payment may be
11 made under a program under title XVIII or a State
12 health care program and knows that the individual who
13 furnished the service was not licensed as a physician.”.

14 (c) REDESIGNATION OF SECTION 1877(d) AS SECTION
15 1128B(e).—Subsection (d) of section 1877 (42 U.S.C.
16 1395nn) is redesignated as subsection (e) and is transferred
17 and inserted in section 1909 at the end thereof.

18 (d) REDESIGNATION OF SECTION 1909 AS SECTION
19 1128B.—Section 1909, as amended by subsections (a), (b),
20 and (c) of this section, is redesignated as section 1128B and
21 is transferred to title XI and inserted immediately after sec-
22 tion 1128A.

23 (e) REPEAL.—Section 1877 (other than subsection (d)
24 thereof which was transferred under subsection (c) of this
25 section) is repealed.

1 SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY
 2 STATE LICENSING AUTHORITIES AGAINST
 3 HEALTH CARE PRACTITIONERS AND PRO-
 4 VIDERS.

5 (a) MEDICAID PLAN REQUIREMENT.—Section 1902(a)
 6 (42 U.S.C. 1396a(a)) is amended—

7 (1) by striking “and” at the end of paragraph
 8 (46);

9 (2) by striking the period at the end of the para-
 10 graph (47) added by section 9407(a) of the Omnibus
 11 Budget Reconciliation Act of 1986 and inserting a
 12 semicolon and transferring and inserting such para-
 13 graph after paragraph (46);

14 (3) by striking the period at the end of the para-
 15 graph (47) added by section 11005(b) of the Anti-Drug
 16 Abuse Act of 1986 and inserting “; and”, by redesign-
 17 ating such paragraph as paragraph (48), and by trans-
 18 ferring and inserting such paragraph after paragraph
 19 (47), and

20 (4) by inserting after paragraph (48) the following
 21 new paragraph:

22 “(49) provide that the State will provide informa-
 23 tion and access to certain information respecting sanc-
 24 tions taken against health care practitioners and pro-
 25 viders by State licensing authorities in accordance with
 26 section 1921.”.

1 (b) INFORMATION REQUIRED.—Title XIX is amended
 2 by redesignating section 1921 as section 1922 and inserting
 3 after section 1920 the following new section:

4 “INFORMATION CONCERNING SANCTIONS TAKEN BY STATE
 5 LICENSING AUTHORITIES AGAINST HEALTH CARE
 6 PRACTITIONERS AND PROVIDERS

7 “SEC. 1921. (a) INFORMATION REPORTING REQUIRE-
 8 MENT.—The requirement referred to in section 1902(a)(49)
 9 is that the State must provide for the following:

10 “(1) INFORMATION REPORTING SYSTEM.—The
 11 State must have in effect a system of reporting the fol-
 12 lowing information with respect to formal proceedings
 13 (as defined by the Secretary in regulations) concluded
 14 against a health care practitioner or entity by any au-
 15 thority of the State (or of a political subdivision there-
 16 of) responsible for the licensing of health care practi-
 17 tioners or entities:

18 “(A) Any adverse action taken by such li-
 19 censing authority as a result of the proceeding, in-
 20 cluding any revocation or suspension of a license
 21 (and the length of any such suspension), reprimand,
 22 censure, or probation.

23 “(B) Any dismissal or closure of the proceed-
 24 ings by reason of the practitioner or entity surren-
 25 dering the license or leaving the State or juris-
 26 diction.

1 “(C) Any other loss of the license of the
2 practitioner or entity, whether by operation of
3 law, voluntary surrender, or otherwise.

4 “(2) ACCESS TO DOCUMENTS.—The State must
5 provide the Secretary (or an entity designated by the
6 Secretary) with access to such documents of the au-
7 thority described in paragraph (1) as may be necessary
8 for the Secretary to determine the facts and circum-
9 stances concerning the actions and determinations de-
10 scribed in such paragraph for the purpose of carrying
11 out this Act.

12 “(b) FORM OF INFORMATION.—The information de-
13 scribed in subsection (a)(1) shall be provided to the Secretary
14 (or to an appropriate private or public agency, under suitable
15 arrangements made by the Secretary with respect to receipt,
16 storage, protection of confidentiality, and dissemination of in-
17 formation) in such a form and manner as the Secretary deter-
18 mines to be appropriate in order to provide for activities of
19 the Secretary under this Act and in order to provide, directly
20 or through suitable arrangements made by the Secretary,
21 information—

22 “(1) to agencies administering Federal health care
23 programs, including private entities administering such
24 programs under contract,

1 “(2) to licensing authorities described in subsec-
2 tion (a)(1),

3 “(3) to State agencies administering or supervis-
4 ing the administration of State health care programs
5 (as defined in section 1128(h)),

6 “(4) to utilization and quality control peer review
7 organizations described in part B of title XI and to ap-
8 propriate entities with contracts under section
9 1154(a)(4)(C) with respect to eligible organizations re-
10 viewed under the contracts,

11 “(5) to State medicaid fraud control units (as de-
12 fined in section 1903(q)),

13 “(6) to hospitals and other health care entities (as
14 defined in section 431 of the Health Care Quality Im-
15 provement Act of 1986), with respect to physicians or
16 other licensed health care practitioners that have en-
17 tered (or may be entering) into an employment or affili-
18 ation relationship with, or have applied for clinical
19 privileges or appointments to the medical staff of, such
20 hospitals or other health care entities (and such infor-
21 mation shall be deemed to be disclosed pursuant to
22 section 427 of, and be subject to the provisions of, that
23 Act); and

1 “(7) to the Attorney General and such other law
2 enforcement officials as the Secretary deems appropri-
3 ate, and

4 “(8) upon request, to the Comptroller General,
5 in order for such authorities to determine the fitness of indi-
6 viduals to provide health care services, to protect the health
7 and safety of individuals receiving health care through such
8 programs, and to protect the fiscal integrity of such
9 programs.

10 “(e) **CONFIDENTIALITY OF INFORMATION PROVID-**
11 **ED.**—The Secretary shall provide for suitable safeguards for
12 the confidentiality of such of the information furnished under
13 subsection (a). Nothing in this subsection shall prevent the
14 disclosure of such information by a party which is otherwise
15 authorized, under applicable State law, to make such dis-
16 closure.

17 “(d) **APPROPRIATE COORDINATION.**—The Secretary
18 shall provide for the maximum appropriate coordination in
19 the implementation of subsection (a) of this section and sec-
20 tion 422 of the Health Care Quality Improvement Act of
21 1986.”.

22 **SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND**
23 **PROVIDERS.**

24 Section 1156 (42 U.S.C. 1320c-5) is amended—

1 (1) by striking “title XVIII” and “such title” in
2 subsection (a) and inserting “this Act” in each in-
3 stance, and

4 (2) by striking “title XVIII” in subsection (b) and
5 inserting “this Act” each place it appears.

6 **SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.**

7 Section 1902 (42 U.S.C. 1396b) is amended by redesign-
8 nating the subsection (l) added by section 3(b) of the Employ-
9 ment Opportunities for Disabled Americans Act as subsection
10 (o) and by inserting after such subsection the following new
11 subsection:

12 “(p)(1) In addition to any other authority, a State may
13 exclude any individual or entity for purposes of participating
14 under the State plan under this title for any reason for which
15 the Secretary could exclude the individual or entity from par-
16 ticipation in a program under title XVIII under section
17 1128, 1128A, or 1866(b)(2).

18 “(2) In order for a State to receive payments for medi-
19 cal assistance under section 1903(a), with respect to pay-
20 ments the State makes to a health maintenance organization
21 (as defined in section 1903(m)) or to an entity furnishing
22 services under a waiver approved under section 1915(b)(1),
23 the State must provide that it will exclude from participation,
24 as such an organization or entity, any organization or entity
25 that—

1 “(A) could be excluded under section 1128(b)(8)
2 (relating to owners and managing employees who have
3 been convicted of certain crimes or received other
4 sanctions), or

5 “(B) has, directly or indirectly, a substantial con-
6 tractual relationship (as defined by the Secretary) with
7 an individual or entity that is described in section
8 1128(b)(8)(B).
9 “(3) As used in this subsection, the term ‘exclude’ in-

10 cludes the refusal to enter into or renew a participation
11 agreement or the termination of such an agreement.”.

12 SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.

13 (a) MATERNAL AND CHILD HEALTH PROGRAM.—Sec-
14 tion 504(b) (42 U.S.C. 704(b)) is amended—

15 (1) by striking “or” at the end of paragraph (4),

16 (2) by striking the period at the end of paragraph

17 (5) and inserting “; or”, and

18 (3) by adding at the end thereof the following new
19 paragraph:

20 “(6) payment for any item or service (other than
21 an emergency item or service) furnished—

22 “(A) by an individual or entity excluded from
23 participation in the program under this title pur-
24 suant to section 1128 or section 1128A, or

1 “(B) at the medical direction or on the pre-
 2 scription of a physician during the period when
 3 the physician is excluded pursuant to section 1128
 4 or section 1128A from participation in the pro-
 5 gram under this title.”.

6 (b) DISCLOSURE REQUIREMENTS.—(1) Subsection (a)
 7 of section 1126 (42 U.S.C. 1320a-5) is amended—

8 (A) in the first sentence, by striking “or other in-
 9 stitution” and all that follows through the period at the
 10 end and inserting “or other entity (other than an indi-
 11 vidual practitioner or group of practitioners) shall be
 12 required to disclose to the Secretary or to the appropri-
 13 ate State agency the name of any person that is a
 14 person described in subparagraphs (A) and (B) of sec-
 15 tion 1128(b)(8).”, and

16 (B) in the second sentence, by striking “institu-
 17 tion, organization, or agency” and inserting “entity”.

18 (2) Subsection (b) of such section is amended by striking
 19 “institution, organization, or agency” and inserting “entity”
 20 each place it appears.

21 (c) MEDICARE PAYMENTS.—(1) Section 1862 (42
 22 U.S.C. 1395y) is amended—

23 (A) by striking subsection (d), and

24 (B) by amending subsection (e) to read as follows:

1 “(e) No payment may be made under this title with re-
 2 spect to any item or service (other than an emergency item
 3 or service) furnished—

4 “(1) by an individual or entity during the period
 5 when such individual or entity is excluded pursuant to
 6 section 1128 or section 1128A from participation in
 7 the program under this title; or

8 “(2) at the medical direction or on the prescrip-
 9 tion of a physician during the period when he is ex-
 10 cluded pursuant to section 1128 or section 1128A from
 11 participation in the program under this title and when
 12 the person furnishing such item or service knew or had
 13 reason to know of the exclusion (after a reasonable
 14 time period after reasonable notice has been furnished
 15 to the person).”.

16 (2) Section 1842(j) (42 U.S.C. 1395u(j)) is amended—

17 (A) in paragraph (2)—

18 (i) by amending subparagraph (A) to read as
 19 follows:

20 “(A) excluding a physician from participation in
 21 the programs under this title for a period not to exceed
 22 5 years, in accordance with the procedures of subsec-
 23 tions (e), (f), and (g) of section 1128, or”, and

24 (ii) by striking “barred from participation in
 25 the program” in the second sentence and inserting

1 “excluded from participation in the programs”;
2 and

3 (B) by striking “bar” in paragraph (3)(A) and in-
4 serting “exclude”.

5 (3) Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is
6 amended by striking “paragraphs (2) and (3) of subsection
7 (d)” and inserting “subsections (e), (f), and (g) of section
8 1128”.

9 (4) Paragraph (3) of section 1886(f) (42 U.S.C.
10 1395ww(f)) is amended to read as follows:

11 “(3) The provisions of subsections (e) through (g) of sec-
12 tion 1128 shall apply to determinations made under para-
13 graph (2) in the same manner as they apply to exclusions
14 effected under section 1128(b)(13).”.

15 (d) ~~TERMINATION OF PROVIDER AGREEMENTS UNDER~~
16 ~~MEDICARE.~~—Section 1866 (42 U.S.C. 1395ee) is
17 amended—

18 (1) by striking paragraph (3) of subsection (a);

19 (2) by amending subsection (b) to read as follows:

20 “(b)(1) A provider of services may terminate an agree-
21 ment with the Secretary under this section at such time and
22 upon such notice to the Secretary and the public as may be
23 provided in regulations, except that notice of more than six
24 months shall not be required.

1 “(2) The Secretary may refuse to enter into an agree-
 2 ment under this section or, upon such reasonable notice to
 3 the provider and the public as may be specified in regula-
 4 tions, may refuse to renew or may terminate such an agree-
 5 ment after the Secretary—

6 “(A) has determined that the provider fails to
 7 comply substantially with the provisions of the agree-
 8 ment, with the provisions of this title and regulations
 9 thereunder, or with a corrective action required under
 10 section 1886(f)(2)(B),

11 “(B) has determined that the provider fails sub-
 12 stantially to meet the applicable provisions of section
 13 1861, or

14 “(C) has excluded the provider from participation
 15 in a program under this title pursuant to section 1128
 16 or section 1128A.

17 “(3) A termination of an agreement or a refusal to
 18 renew an agreement under this subsection shall become effec-
 19 tive on the same date and in the same manner as an exclu-
 20 sion from participation under the programs under this title
 21 becomes effective under section 1128(e).”;

22 (3) in paragraphs (1) and (2) of subsection (e), by
 23 striking “an agreement filed under this title by a pro-
 24 vider of services has been terminated by the Seere-
 25 tary” and inserting “the Secretary has terminated or

1 has refused to renew an agreement under this title
2 with a provider of services”;

3 (4) by inserting “or nonrenewal” in subsection (e)
4 after “termination” each place it appears; and

5 (5) by adding at the end the following new sub-
6 section:

7 “(h)(1) Except as provided in paragraph (2), an institu-
8 tion or agency dissatisfied with a determination by the Seere-
9 tary that it is not a provider of services or with a determina-
10 tion described in subsection (b)(2) shall be entitled to a hear-
11 ing thereon by the Secretary (after reasonable notice) to the
12 same extent as is provided in section 205(b), and to judicial
13 review of the Secretary’s final decision after such hearing as
14 is provided in section 205(g).

15 “(2) An institution or agency is not entitled to separate
16 notice and opportunity for a hearing under both section 1128
17 and this section with respect to a determination or determi-
18 nations based on the same underlying facts and issues.”.

19 (e) CONFORMING AMENDMENT.—Section 1869 (42
20 U.S.C. 1395ff) is amended by striking subsection (e).

21 (f) MEDICAID PLAN REVISIONS.—Section 1902(a) (42
22 U.S.C. 1396b(a)) is amended—

23 (1) in paragraph (23), by inserting “subsection (g)
24 and in” after “except as provided in”,

1 (2) in paragraph (38), by striking “respectively,
2 (A)” and all that follows up to the semicolon at the
3 end and inserting “the information described in section
4 1128(b)(9)”, and

5 (3) in paragraph (39)—

6 (A) by striking “bar” and inserting “ex-
7 clude”,

8 (B) by striking “person” and inserting “indi-
9 vidual or entity” each place it appears, and

10 (C) by inserting “or section 1128A” after
11 “section 1128”.

12 (g) DENIAL OF FEDERAL FINANCIAL PARTICIPATION
13 UNDER MEDICAID.—Paragraph (2) of section 1903(i) (42
14 U.S.C. 1396b(i)) is amended to read as follows:

15 “(2) with respect to any amount expended for an
16 item or service (other than an emergency item or serv-
17 ice) furnished—

18 “(A) under the plan by any individual or
19 entity during any period when the individual or
20 entity is excluded from participation in the State
21 plan under this title pursuant to section 1128 or
22 section 1128A, or

23 “(B) at the medical direction or on the pre-
24 scription of a physician, during the period when
25 such physician is excluded pursuant to section

1 1128 or section 1128A from participation in the
 2 program under this title and when the person fur-
 3 nishing such item or service knew or had reason
 4 to know of the exclusion (after a reasonable time
 5 period after reasonable notice has been furnished
 6 to the person).”.

7 (h) MEDICAID CONFORMING AMENDMENTS.—(1) Sub-
 8 section (n) of section 1903 (42 U.S.C. 1396b) is repealed.

9 (2) Paragraph (2) of section 1915(a) (42 U.S.C.
 10 1396n(a)) is amended to read as follows:

11 “(2) restricts for a reasonable period of time the provid-
 12 er or providers from which an individual (eligible for medical
 13 assistance for items or services under the State plan) can
 14 receive such items or services, if—

15 “(A) the State has found, after notice and
 16 opportunity for a hearing (in accordance with pro-
 17 cedures established by the State), that the individ-
 18 ual has utilized such items or services at a fre-
 19 quency or amount not medically necessary (as de-
 20 termined in accordance with utilization guidelines
 21 established by the State), and

22 “(B) under such restriction, individuals eligi-
 23 ble for medical assistance for such services have
 24 reasonable access (taking into account geographic

1 location and reasonable travel time) to such serv-
 2 ices of adequate quality.”.

3 (i) ~~TITLE XX.—Section 2005(a) (42 U.S.C. 1397d(a)) is~~
 4 ~~amended—~~

5 (1) by striking “or” at the end of paragraph (7),

6 (2) by striking the period at the end of paragraph

7 (8) and inserting “; or”, and

8 (3) by adding at the end thereof the following new
 9 paragraph:

10 “(9) for payment for any item or service (other
 11 than an emergency item or service) furnished—

12 “(A) by an individual or entity excluded from
 13 participation in the program under this title pur-
 14 suant to section 1128 or section 1128A, or

15 “(B) at the direction or on the prescription of
 16 a physician during the period when the physician
 17 is excluded pursuant to section 1128 or section
 18 1128A from participation in the program under
 19 this title.”.

20 (j) ~~DENIAL, REVOCATION, OR SUSPENSION OF REGIS-~~
 21 ~~TRATION TO MANUFACTURE, DISTRIBUTE, OR DISPENSE A~~
 22 ~~CONTROLLED SUBSTANCE FOR ENTITIES EXCLUDED FROM~~
 23 ~~THE MEDICARE PROGRAM.—Section 304(a) of the Con-~~
 24 ~~trolled Substances Act (21 U.S.C. 824(a)) is amended—~~

25 (1) by striking “or” at the end of paragraph (3),

1 (2) by striking the period at the end of paragraph
2 (4) and inserting “; or”, and

3 (3) by inserting after paragraph (4) the following
4 new paragraph:

5 “(5) has been excluded (or directed to be ex-
6 cluded) from participation in a program pursuant to
7 section 1128(a) of the Social Security Act.”.

8 **SEC. 9. CLARIFICATION OF MEDICAID MORATORIUM PROVI-**
9 **SIONS OF DEFICIT REDUCTION ACT OF 1984.**

10 Section 2373(c) of the Deficit Reduction Act of 1984
11 (Public Law 98-369; 98 Stat. 1112) is amended to read as
12 follows:

13 “(c)(1) The Secretary of Health and Human Services
14 shall not take any compliance, disallowance, penalty, or
15 other regulatory action against a State with respect to the
16 moratorium period described in paragraph (2) by reason of
17 such State’s plan described in paragraph (5) under title XIX
18 of the Social Security Act (including any part of the plan
19 operating pursuant to section 1902(f) of such Act), or the
20 operation thereunder, being determined to be in violation of
21 clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or sec-
22 tion 1902(a)(10)(C)(i)(III) of such Act on account of such
23 plan’s (or its operation) having a standard or methodology
24 which the Secretary interprets as being less restrictive than
25 the standard or methodology required under such section,

1 provided that such plan (or its operation) does not make ineli-
 2 gible any individual who would be eligible but for the provi-
 3 sions of this subsection.

4 “(2) The moratorium period is the period beginning on
 5 October 1, 1981, and ending 18 months after the date on
 6 which the Secretary submits the report required under para-
 7 graph (3).

8 “(3) The Secretary shall report to the Congress within
 9 12 months after the date of the enactment of this Act with
 10 respect to the appropriateness, and impact on States and re-
 11 cipients of medical assistance, of applying standards and
 12 methodologies utilized in cash assistance programs to those
 13 recipients of medical assistance who do not receive cash as-
 14 sistance, and any recommendations for changes in such
 15 requirements.

16 “(4) No provision of law shall repeal or suspend the
 17 moratorium imposed by this subsection unless such provision
 18 specifically amends or repeals this subsection.

19 “(5) In this subsection, a State plan is considered to
 20 include—

21 “(A) any amendment or other change in the plan
 22 which is submitted by a State, or

23 “(B) any policy or guideline delineated in the
 24 Medicaid operation or program manuals of the State
 25 which are submitted by the State to the Secretary,

1 whether before or after the date of enactment of this Act and
 2 whether or not the amendment or change, or the operating or
 3 program manual was approved, disapproved, acted upon, or
 4 not acted upon by the Secretary.

5 “(6) During the moratorium period, the Secretary shall
 6 implement (and shall not change by any administrative
 7 action) the policy in effect at the beginning of such moratori-
 8 um period with respect to—

9 “(A) the point in time at which an institutional-
 10 ized individual must sell his home (in order that it not
 11 be counted as a resource); and

12 “(B) the time period allowed for sale of a home of
 13 any such individual,
 14 who is an applicant for or recipient of medical assistance
 15 under the State plan as a medically needy individual (de-
 16 scribed in section 1902(a)(10)(C) of the Social Security Act)
 17 or as an optional categorically needy individual (described in
 18 section 1902(a)(10)(A)(ii) of such Act).”

19 **SEC. 10. LIMITATION OF LIABILITY OF MEDICARE BENEFICI-**
 20 **ARIES WITH RESPECT TO SERVICES FUR-**
 21 **NISHED BY EXCLUDED INDIVIDUALS AND**
 22 **ENTITIES.**

23 Title XVIII is amended by adding at the end the follow-
 24 ing new section:

1 "LIMITATION OF LIABILITY OF BENEFICIARIES WITH RE-
2 SPECT TO SERVICES FURNISHED BY EXCLUDED INDIVIDUALS AND ENTITIES

4 "SEC. 1890. Where an individual eligible for benefits
5 under this title submits a claim for payment for items or services
6 furnished by an individual or entity excluded from participation
7 in the programs under this title, pursuant to section
8 1128, 1128A, 1156, 1160 (as in effect on September 2,
9 1982), 1862(d) (as in effect on the date of the enactment of
10 the Medicare and Medicaid Patient and Program Protection
11 Act of 1987), or 1866, and such beneficiary did not know or
12 have reason to know that such individual or entity was so
13 excluded, then, to the extent permitted by this title, and notwithstanding
14 such exclusion, payment shall be made for such items or services.
15 In each such case the Secretary shall notify the beneficiary of the
16 exclusion of the individual or entity furnishing the items or services.
17 Payment shall not be made for items or services furnished by an excluded individual
18 or entity to a beneficiary after a reasonable time (as determined
19 by the Secretary in regulations) after the Secretary has notified
20 the beneficiary of the exclusion of that individual or entity."

1 SEC. 11. DEFINITION OF PERSON WITH OWNERSHIP OR CON-
2 TROL INTEREST.

3 Section 1124(a)(3)(A)(ii) (42 U.S.C. 1320a-
4 3(a)(3)(A)(ii)) is amended by striking "\$25,000 or".

5 SEC. 12. CONDITIONAL APPROVAL OF RENAL DIALYSIS
6 FACILITIES.

7 Section 1881 (42 U.S.C. 1395rr) is amended by adding
8 at the end the following new subsection:

9 "(h)(1) In any case where the Secretary—

10 "(A) finds that a renal dialysis facility is not in
11 substantial compliance with requirements for such fa-
12 cilities prescribed under subsection (b)(1)(A);

13 "(B) finds that the facility's deficiencies do not
14 immediately jeopardize the health and safety of pa-
15 tients; and

16 "(C) has given the facility a reasonable opportu-
17 nity to correct its deficiencies;

18 the Secretary may, in lieu of terminating approval of the fa-
19 cility, determine that payment under this title shall be made
20 to the facility only for services furnished to individuals who
21 were patients of the facility before the effective date of the
22 notice.

23 "(2) The Secretary's decision to restrict payments under
24 this subsection shall be made effective only after such notice
25 to the public and to the facility as may be prescribed in regu-
26 lations; and shall remain in effect until (A) the Secretary

1 finds that the facility is in substantial compliance with the
2 requirements under subsection (b)(1)(A), or (B) the Secretary
3 terminates the agreement under this title with the facility.

4 “(3) A facility dissatisfied with a determination by the
5 Secretary under paragraph (1) shall be entitled to a hearing
6 thereon by the Secretary (after reasonable notice) to the
7 same extent as is provided in section 205(b), and to judicial
8 review of the Secretary’s final decision after such hearing as
9 is provided in section 205(g).”

10 **SEC. 13. AMENDMENT RELATING TO FRAUD INVOLVING MEDI-**
11 **CARE SUPPLEMENTAL INSURANCE.**

12 Section 1882(d)(1) (42 U.S.C. 1395ss(d)(1)) is amended
13 by striking “knowingly or willfully” and inserting “knowing-
14 ly and willfully”.

15 **SEC. 14. STANDARDS FOR ANTI-KICKBACK PROVISIONS.**

16 (a) **REGULATIONS.**—The Secretary of Health and
17 Human Services, in consultation with the Attorney General,
18 not later than 1 year after the date of the enactment of this
19 Act shall publish proposed regulations, and not later than 2
20 years after the date of the enactment of this Act shall pro-
21 mulgate final regulations, specifying payment practices that
22 shall not be treated as a criminal offense under section
23 1128B(b) of the Social Security Act and shall not serve as
24 the basis for an exclusion under section 1128(b)(7) of such
25 Act. Any practices specified in regulations pursuant to the

1 preceding sentence shall be in addition to the practices de-
 2 scribed in subparagraphs (A) through (C) of section
 3 1128B(b)(3).

4 (b) CRIMINAL VIOLATION.—Section 1128B(b)(3), as
 5 amended and redesignated by section 4 of this Act, is further
 6 amended—

7 (1) by striking “and” at the end of subparagraph
 8 (B),

9 (2) by striking the period at the end of subpara-
 10 graph (C) and inserting “; and”, and

11 (3) by adding at the end thereof the following new
 12 subparagraph:

13 “(D) any payment practice specified by the Secre-
 14 tary in regulations promulgated pursuant to section
 15 14(a) of the Medicare and Medicaid Patient and Pro-
 16 gram Protection Act of 1987.”.

17 SEC. 15. EFFECTIVE DATES.

18 (a) IN GENERAL.—Except as provided in subsections
 19 (b), (c), (d), and (e), the amendments made by this Act shall
 20 become effective at the end of the fourteen-day period begin-
 21 ning on the date of the enactment of this Act and shall not
 22 apply to administrative proceedings commenced before the
 23 end of such period.

24 (b) MANDATORY MINIMUM EXCLUSIONS APPLY PRO-
 25 SPECTIVELY.—Section 1128(e)(3)(B) of the Social Security

1 Act (as amended by this Act), which requires an exclusion of
2 not less than five years in the case of certain exclusions, shall
3 not apply to exclusions based on convictions occurring before
4 the date of the enactment of this Act.

5 (c) EFFECTIVE DATE FOR CHANGES IN MEDICAID
6 LAW.—(1) The amendments made by sections 5 and 8(f)
7 apply (except as provided under paragraph (2)) to payments
8 under title XIX of the Social Security Act for calendar quar-
9 ters beginning more than thirty days after the date of the
10 enactment of this Act, without regard to whether or not final
11 regulations to carry out such amendment have been published
12 by such date.

13 (2) In the case of a State plan for medical assistance
14 under title XIX of the Social Security Act which the Secre-
15 tary of Health and Human Services determines requires
16 State legislation (other than legislation appropriating funds)
17 in order for the plan to meet the additional requirements im-
18 posed by the amendments made by this Act, the State plan
19 shall not be regarded as failing to comply with the require-
20 ments of such title solely on the basis of its failure to meet
21 these additional requirements before the first day of the first
22 calendar quarter beginning after the close of the first regular
23 session of the State legislature that begins after the date of
24 the enactment of this Act.

1 (3) Subsection (j) of section 1128A of the Social Securi-
 2 ty Act (as added by section 3(f) of this Act) takes effect on
 3 the date of the enactment of this Act.

4 (d) **PHYSICIAN MISREPRESENTATIONS.**—Clauses (ii)
 5 and (iii) of section 1128A(a)(1)(C) of the Social Security Act,
 6 as amended by section 3(a)(1)(F) of this Act, apply to claims
 7 presented for services performed on or after the effective date
 8 specified in subsection (a), without regard to the date the
 9 misrepresentation of fact was made.

10 (e) **CLARIFICATION OF MEDICAID MORATORIUM.**—
 11 The amendments made by section 9 of this Act shall apply as
 12 though they were originally included in the enactment of sec-
 13 tion 2373(e) of the Deficit Reduction Act of 1984.

14 (f) **TREATMENT OF CERTAIN DENIALS OF PAY-**
 15 **MENT.**—For purposes of section 1128(b)(8)(B)(iii) of the
 16 Social Security Act (as amended by section 2 of this Act), a
 17 person shall be considered to have been excluded from par-
 18 ticipation under a program under title XVIII if payment to
 19 the person has been denied under section 1862(d) of the
 20 Social Security Act, as in effect before the effective date
 21 specified in subsection (a).

1 *SECTION 1. SHORT TITLE; REFERENCES IN ACT; TABLE OF*
 2 *CONTENTS.*

3 (a) *SHORT TITLE.*—*This Act may be cited as the*
 4 *“Medicare and Medicaid Patient and Program Protection*
 5 *Act of 1987”.*

6 (b) *AMENDMENTS TO THE SOCIAL SECURITY ACT.*—
 7 *Except as otherwise specifically provided, whenever in this*
 8 *Act an amendment is expressed in terms of an amendment to*
 9 *or repeal of, a section or other provision, the reference shall be*
 10 *considered to be made to that section or other provision of the*
 11 *Social Security Act.*

12 (c) *TABLE OF CONTENTS.*—*The table of contents of*
 13 *this Act is as follows:*

Sec. 1. Short title; references in Act; table of contents.

Sec. 2. Exclusion from medicare and State health care programs.

Sec. 3. Civil monetary penalties.

Sec. 4. Criminal penalties for acts involving medicare and State health care programs.

Sec. 5. Information concerning sanctions taken by State licensing authorities against health care practitioners and providers.

Sec. 6. Obligation of health care practitioners and providers.

Sec. 7. Exclusion under the medicaid program.

Sec. 8. Miscellaneous and conforming amendments.

Sec. 9. Clarification of medicaid moratorium provisions of Deficit Reduction Act of 1984.

Sec. 10. Limitation of liability of medicare beneficiaries with respect to services furnished by excluded individuals and entities.

Sec. 11. Definition of person with ownership or control interest.

Sec. 12. Conditional approval of renal dialysis facilities.

Sec. 13. Amendment relating to fraud involving medicare supplemental insurance.

Sec. 14. Standards for anti-kickback provisions.

Sec. 15. Effective dates.

1 **SEC. 2. EXCLUSION FROM MEDICARE AND STATE HEALTH CARE**
2 **PROGRAMS.**

3 *Section 1128 (42 U.S.C. 1320a-7) is amended to read*
4 *as follows:*

5 **“EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES**
6 **FROM PARTICIPATION IN MEDICARE AND STATE**
7 **HEALTH CARE PROGRAMS**

8 **“SEC. 1128. (a) MANDATORY EXCLUSION.—***The Sec-*
9 *retary shall exclude the following individuals and entities*
10 *from participation in any program under title XVIII and*
11 *shall direct that the following individuals and entities be ex-*
12 *cluded from participation in any State health care program*
13 *(as defined in subsection (h)):*

14 **“(1) CONVICTION OF PROGRAM-RELATED**
15 **CRIMES.—***Any individual or entity that has been con-*
16 *victed of a criminal offense related to the delivery of an*
17 *item or service under title XVIII or under any State*
18 *health care program.*

19 **“(2) CONVICTION RELATING TO PATIENT**
20 **ABUSE.—***Any individual or entity that has been con-*
21 *victed, under Federal or State law, of a criminal of-*
22 *fense relating to neglect or abuse of patients in connec-*
23 *tion with the delivery of a health care item or service.*

24 **“(b) PERMISSIVE EXCLUSION.—***The Secretary may*
25 *exclude the following individuals and entities from participa-*
26 *tion in any program under title XVIII and may direct that*

1 *the following individuals and entities be excluded from par-*
2 *ticipation in any State health care program:*

3 “(1) *CONVICTION RELATING TO FRAUD.—Any*
4 *individual or entity that has been convicted, under*
5 *Federal or State law, in connection with the delivery*
6 *of a health care item or service or with respect to any*
7 *act or omission in a program operated by or financed*
8 *in whole or in part by any Federal, State, or local*
9 *government agency, of a criminal offense relating to*
10 *fraud, theft, embezzlement, breach of fiduciary respon-*
11 *sibility, or other financial misconduct.*

12 “(2) *CONVICTION RELATING TO OBSTRUCTION*
13 *OF AN INVESTIGATION.—Any individual or entity*
14 *that has been convicted, under Federal or State law, in*
15 *connection with the interference with or obstruction of*
16 *any investigation into any criminal offense described*
17 *in paragraph (1) or in subsection (a).*

18 “(3) *CONVICTION RELATING TO CONTROLLED*
19 *SUBSTANCE.—Any individual or entity that has been*
20 *convicted, under Federal or State law, of a criminal*
21 *offense relating to the unlawful manufacture, distribu-*
22 *tion, prescription, or dispensing of a controlled sub-*
23 *stance.*

24 “(4) *LICENSE REVOCATION OR SUSPENSION.—*
25 *Any individual or entity—*

1 “(A) whose license to provide health care has
2 been revoked or suspended by any State licensing
3 authority, or who otherwise lost such a license, for
4 reasons bearing on the individual’s or entity’s
5 professional competence, professional performance,
6 or financial integrity, or

7 “(B) who surrendered such a license while a
8 formal disciplinary proceeding was pending before
9 such an authority and the proceeding concerned
10 the individual’s or entity’s professional compe-
11 tence, professional performance, or financial in-
12 tegrity.

13 “(5) *EXCLUSION OR SUSPENSION UNDER FED-*
14 *ERAL OR STATE HEALTH CARE PROGRAM.*—Any in-
15 dividual or entity which has been suspended or ex-
16 cluded from participation, or otherwise sanctioned,
17 under—

18 “(A) any Federal program, including pro-
19 grams of the Department of Defense or the Veter-
20 ans’ Administration, involving the provision of
21 health care, or

22 “(B) a State health care program,
23 for reasons bearing on the individual’s or entity’s pro-
24 fessional competence, professional performance, or fi-
25 nancial integrity.

1 “(6) CLAIMS FOR EXCESSIVE CHARGES OR UN-
2 NECESSARY SERVICES AND FAILURE OF CERTAIN
3 ORGANIZATIONS TO FURNISH MEDICALLY NECES-
4 SARY SERVICES.—Any individual or entity that the
5 Secretary determines—

6 “(A) has submitted or caused to be submitted
7 bills or requests for payment (where such bills or
8 requests are based on charges or cost) under title
9 XVIII or a State health care program containing
10 charges (or, in applicable cases, requests for pay-
11 ment of costs) for items or services furnished sub-
12 stantially in excess of such individual’s or enti-
13 ty’s usual charges (or, in applicable cases, sub-
14 stantially in excess of such individual’s or enti-
15 ty’s costs) for such items or services, unless the
16 Secretary finds there is good cause for such bills
17 or requests containing such charges or costs;

18 “(B) has furnished or caused to be furnished
19 items or services to patients (whether or not eligi-
20 ble for benefits under title XVIII or under a
21 State health care program) substantially in excess
22 of the needs of such patients or of a quality which
23 fails to meet professionally recognized standards
24 of health care;

25 “(C) is—

1 “(i) a health maintenance organization
2 (as defined in section 1903(m)) providing
3 items and services under a State plan ap-
4 proved under title XIX, or

5 “(ii) an entity furnishing services under
6 a waiver approved under section 1915(b)(1),
7 and has failed substantially to provide medically
8 necessary items and services that are required
9 (under law or the contract with the State under
10 title XIX) to be provided to individuals covered
11 under that plan or waiver, if the failure has ad-
12 versely affected (or has a substantial likelihood of
13 adversely affecting) these individuals; or

14 “(D) is an entity providing items and serv-
15 ices as an eligible organization under a risk-shar-
16 ing contract under section 1876 and has failed
17 substantially to provide medically necessary items
18 and services that are required (under law or such
19 contract) to be provided to individuals covered
20 under the risk-sharing contract, if the failure has
21 adversely affected (or has a substantial likelihood
22 of adversely affecting) these individuals.

23 “(7) FRAUD, KICKBACKS, AND OTHER PROHIB-
24 ITED ACTIVITIES.—Any individual or entity that the

1 *Secretary determines has committed an act which is*
2 *described in section 1128A or section 1128B.*

3 “(8) *ENTITIES CONTROLLED BY A SANCTIONED*
4 *INDIVIDUAL.—Any entity with respect to which the*
5 *Secretary determines that a person—*

6 “(A)(i) *with an ownership or control interest*
7 *(as defined in section 1124(a)(3)) in that entity,*
8 *or*

9 “(ii) *who is an officer, director, agent, or*
10 *managing employee (as defined in section*
11 *1126(b)) of that entity—*
12 *is a person—*

13 “(B)(i) *who has been convicted of any of-*
14 *fense described in subsection (a) or in paragraph*
15 *(1), (2), or (3) of this subsection;*

16 “(ii) *against whom a civil monetary penalty*
17 *has been assessed under section 1128A; or*

18 “(iii) *who has been excluded from participa-*
19 *tion under a program under title XVIII or under*
20 *a State health care program.*

21 “(9) *FAILURE TO DISCLOSE REQUIRED INFOR-*
22 *MATION.—Any entity that did not fully and accurately*
23 *make any disclosure required by section 1124 or sec-*
24 *tion 1126.*

1 “(10) *FAILURE TO SUPPLY REQUESTED INFOR-*
 2 *MATION ON SUBCONTRACTORS AND SUPPLIERS.—*

3 *Any disclosing entity (as defined in section*
 4 *1124(a)(2)) that fails to supply (within such period as*
 5 *may be specified by the Secretary in regulations) upon*
 6 *request specifically addressed to the entity by the Sec-*
 7 *retary or by the State agency administering or super-*
 8 *vising the administration of a State health care pro-*
 9 *gram—*

10 “(A) *full and complete information as to the*
 11 *ownership of a subcontractor (as defined by the*
 12 *Secretary in regulations) with whom the entity*
 13 *has had, during the previous 12 months, business*
 14 *transactions in an aggregate amount in excess of*
 15 *\$25,000, or*

16 “(B) *full and complete information as to any*
 17 *significant business transactions (as defined by*
 18 *the Secretary in regulations), occurring during*
 19 *the five-year period ending on the date of such re-*
 20 *quest, between the entity and any wholly owned*
 21 *supplier or between the entity and any subcon-*
 22 *tractor.*

23 “(11) *FAILURE TO SUPPLY PAYMENT INFORMA-*
 24 *TION.—Any individual or entity furnishing items or*
 25 *services for which payment may be made under title*

1 *XVIII or a State health care program that fails to*
2 *provide such information as the Secretary or the ap-*
3 *propriate State agency finds necessary to determine*
4 *whether such payments are or were due and the*
5 *amounts thereof, or has refused to permit such exami-*
6 *nation of its records by or on behalf of the Secretary or*
7 *that agency as may be necessary to verify such infor-*
8 *mation.*

9 *“(12) FAILURE TO GRANT IMMEDIATE*
10 *ACCESS.—Any individual or entity that fails to grant*
11 *immediate access, upon reasonable request (as defined*
12 *by the Secretary in regulations) to any of the*
13 *following:*

14 *“(A) To the Secretary, or to the agency used*
15 *by the Secretary, for the purpose specified in the*
16 *first sentence of section 1864(a) (relating to com-*
17 *pliance with conditions of participation or pay-*
18 *ment).*

19 *“(B) To the Secretary or the State agency,*
20 *to perform the reviews and surveys required under*
21 *State plans under paragraphs (26), (31), and*
22 *(33) of section 1902(a) and under section*
23 *1903(g).*

24 *“(C) To the Inspector General of the De-*
25 *partment of Health and Human Services, for the*

1 *purpose of reviewing records, documents, and*
2 *other data necessary to the performance of the*
3 *statutory functions of the Inspector General.*

4 “(D) *To a State medicaid fraud control unit*
5 *(as defined in section 1903(q)), for the purpose of*
6 *conducting activities described in that section.*

7 “(13) *FAILURE TO TAKE CORRECTIVE*
8 *ACTION.—Any hospital that fails to comply substan-*
9 *tially with a corrective action required under section*
10 *1886(f)(2)(B).*

11 “(14) *DEFAULT ON HEALTH EDUCATION LOAN*
12 *OR SCHOLARSHIP OBLIGATIONS.—Any individual*
13 *who the Secretary determines is in default on repay-*
14 *ments of scholarship obligations or loans in connection*
15 *with health professions education made or secured, in*
16 *whole or in part, by the Secretary and with respect to*
17 *whom the Secretary has taken all reasonable steps*
18 *available to the Secretary to secure repayment of such*
19 *obligations or loans, except that (A) the Secretary shall*
20 *not exclude pursuant to this paragraph a physician*
21 *who is the sole community physician or sole source of*
22 *essential specialized services in a community if a State*
23 *requests that the physician not be excluded, and (B)*
24 *the Secretary shall take into account, in determining*
25 *whether to exclude any other physician pursuant to*

1 *this paragraph, access of beneficiaries to physician*
2 *services for which payment may be made under title*
3 *XVIII or XIX.*

4 *“(c) NOTICE, EFFECTIVE DATE, AND PERIOD OF*
5 *EXCLUSION.—(1) An exclusion under this section or under*
6 *section 1128A shall be effective at such time and upon such*
7 *reasonable notice to the public and to the individual or entity*
8 *excluded as may be specified in regulations consistent with*
9 *paragraph (2).*

10 *“(2)(A) Except as provided in subparagraph (B), such*
11 *an exclusion shall be effective with respect to services fur-*
12 *nished to an individual on or after the effective date of the*
13 *exclusion.*

14 *“(B) Unless the Secretary determines that the health*
15 *and safety of individuals receiving services warrants the ex-*
16 *clusion taking effect earlier, an exclusion shall not apply to*
17 *payments made under title XVIII or under a State health*
18 *care program for—*

19 *“(i) inpatient institutional services furnished to*
20 *an individual who was admitted to such institution*
21 *before the date of the exclusion, or*

22 *“(ii) home health services and hospice care fur-*
23 *nished to an individual under a plan of care estab-*
24 *lished before the date of the exclusion,*

1 *until the passage of 30 days after the effective date of the*
 2 *exclusion.*

3 “(3)(A) *The Secretary shall specify, in the notice of ex-*
 4 *clusion under paragraph (1) and the written notice under*
 5 *section 1128A, the minimum period (or, in the case of an*
 6 *exclusion of an individual under subsection (b)(12), the*
 7 *period) of the exclusion.*

8 “(B) *In the case of an exclusion under subsection (a),*
 9 *the minimum period of exclusion shall be not less than five*
 10 *years, except that, upon the request of a State, the Secretary*
 11 *may waive the exclusion under subsection (a)(1) in the case*
 12 *of an individual or entity that is the sole community physi-*
 13 *cian or sole source of essential specialized services in a com-*
 14 *munity. The Secretary’s decision whether to waive the exclu-*
 15 *sion shall not be reviewable.*

16 “(C) *In the case of an exclusion of an individual under*
 17 *subsection (b)(12), the period of the exclusion shall be equal*
 18 *to the sum of—*

19 “(i) *the length of the period in which the individ-*
 20 *ual failed to grant the immediate access described in*
 21 *that subsection, and*

22 “(ii) *an additional period, not to exceed 90 days,*
 23 *set by the Secretary.*

24 “(d) *NOTICE TO STATE AGENCIES AND EXCLUSION*
 25 *UNDER STATE HEALTH CARE PROGRAMS.—(1) Subject to*

1 paragraph (3), the Secretary shall exercise the authority
 2 under subsection (b) in a manner that results in an individ-
 3 ual's or entity's exclusion from all the programs under title
 4 XVIII and all the State health care programs in which the
 5 individual or entity may otherwise participate.

6 “(2) The Secretary shall promptly notify each appropri-
 7 ate State agency administering or supervising the adminis-
 8 tration of each State health care program (and, in the case of
 9 an exclusion effected pursuant to subsection (a) and to which
 10 section 304(a)(5) of the Controlled Substances Act may
 11 apply, the Attorney General)—

12 “(A) of the fact and circumstances of each exclu-
 13 sion effected against an individual or entity under this
 14 section or section 1128A, and

15 “(B) of the period (described in paragraph (3))
 16 for which the State agency is directed to exclude the
 17 individual or entity from participation in the State
 18 health care program.

19 “(3)(A) Except as provided in subparagraph (B), the
 20 period of the exclusion under a State health care program
 21 under paragraph (2) shall be the same as any period of exclu-
 22 sion under a program under title XVIII.

23 “(B) The Secretary may waive an individual's or enti-
 24 ty's exclusion under a State health care program under para-
 25 graph (2) if the Secretary receives and approves a request for

1 *the waiver with respect to the individual or entity from the*
2 *State agency administering or supervising the administra-*
3 *tion of the program.*

4 “(e) *NOTICE TO STATE LICENSING AGENCIES.—The*
5 *Secretary shall—*

6 “(1) *promptly notify the appropriate State or*
7 *local agency or authority having responsibility for the*
8 *licensing or certification of an individual or entity ex-*
9 *cluded (or directed to be excluded) from participation*
10 *under this section or section 1128A, of the fact and*
11 *circumstances of the exclusion,*

12 “(2) *request that appropriate investigations be*
13 *made and sanctions invoked in accordance with appli-*
14 *cable State law and policy, and*

15 “(3) *request that the State or local agency or au-*
16 *thority keep the Secretary and the Inspector General*
17 *of the Department of Health and Human Services*
18 *fully and currently informed with respect to any ac-*
19 *tions taken in response to the request.*

20 “(f) *NOTICE, HEARING, AND JUDICIAL REVIEW.—*
21 *(1) Subject to paragraph (2), any individual or entity that is*
22 *excluded (or directed to be excluded) from participation under*
23 *this section is entitled to reasonable notice and opportunity*
24 *for a hearing thereon by the Secretary to the same extent as*
25 *is provided in section 205(b), and to judicial review of the*

1 *Secretary's final decision after such hearing as is provided in*
2 *section 205(g).*

3 “(2) *Unless the Secretary determines that the health or*
4 *safety of individuals receiving services warrants the exclu-*
5 *sion taking effect earlier, any individual or entity that is the*
6 *subject of an adverse determination under subsection (b)(7)*
7 *shall be entitled to a hearing by an administrative law judge*
8 *(as provided under section 205(b)) on the determination*
9 *under subsection (b)(7) before any exclusion based upon the*
10 *determination takes effect.*

11 “(3) *The provisions of section 205(h) shall apply with*
12 *respect to this section and sections 1128A and 1156 to the*
13 *same extent as it is applicable with respect to title II.*

14 “(g) *APPLICATION FOR TERMINATION OF EXCLU-*
15 *SION.—(1) An individual or entity excluded (or directed to*
16 *be excluded) from participation under this section or section*
17 *1128A may apply to the Secretary, in the manner specified*
18 *by the Secretary in regulations and at the end of the mini-*
19 *imum period of exclusion provided under subsection (c)(3)*
20 *and at such other times as the Secretary may provide, for*
21 *termination of the exclusion effected under this section or sec-*
22 *tion 1128A.*

23 “(2) *The Secretary may terminate the exclusion if the*
24 *Secretary determines, on the basis of the conduct of the appli-*
25 *cant which occurred after the date of the notice of exclusion or*

1 *which was unknown to the Secretary at the time of the exclu-*
 2 *sion, that—*

3 “(A) *there is no basis under subsection (a) or (b)*
 4 *or section 1128A(a) for a continuation of the exclu-*
 5 *sion, and*

6 “(B) *there are reasonable assurances that the*
 7 *types of actions which formed the basis for the original*
 8 *exclusion have not recurred and will not recur.*

9 “(3) *The Secretary shall promptly notify each appropri-*
 10 *ate State agency administering or supervising the adminis-*
 11 *tration of each State health care program (and, in the case of*
 12 *an exclusion effected pursuant to subsection (a) and to which*
 13 *section 304(a)(5) of the Controlled Substances Act may*
 14 *apply, the Attorney General) of the fact and circumstances of*
 15 *each termination of exclusion made under this subsection.*

16 “(h) *DEFINITION OF STATE HEALTH CARE PRO-*
 17 *GRAM.—For purposes of this section and sections 1128A and*
 18 *1128B, the term ‘State health care program’ means—*

19 “(1) *a State plan approved under title XIX,*

20 “(2) *any program receiving funds under title V or*
 21 *from an allotment to a State under such title, or*

22 “(3) *any program receiving funds under title XX*
 23 *or from an allotment to a State under such title.*

1 “(i) *CONVICTED DEFINED.*—For purposes of subsec-
 2 tions (a) and (b), a physician or other individual is consid-
 3 ered to have been ‘convicted’ of a criminal offense—

4 “(1) when a judgment of conviction has been en-
 5 tered against the physician or individual by a Federal,
 6 State, or local court, regardless of whether there is an
 7 appeal pending or whether the judgment of conviction
 8 or other record relating to criminal conduct has been
 9 expunged;

10 “(2) when there has been a finding of guilt
 11 against the physician or individual by a Federal,
 12 State, or local court;

13 “(3) when a plea of guilty or nolo contendere by
 14 the physician or individual has been accepted by a
 15 Federal, State, or local court; or

16 “(4) when the physician or individual has entered
 17 into participation in a first offender or other program
 18 where judgment of conviction has been withheld.”.

19 **SEC. 3. CIVIL MONETARY PENALTIES.**

20 (a) *GROUND FOR IMPOSITION.*—(1) Section
 21 1128A(a)(1) (42 U.S.C. 1320a-7a(a)(1)) is amended by
 22 striking “the Secretary determines” and all that follows
 23 through “; or” and inserting “the Secretary determines—

1 “(A) is for a medical or other item or service that
2 the person knows or has reason to know was not pro-
3 vided as claimed,

4 “(B) is for a medical or other item or service and
5 the person knows or has reason to know the claim is
6 false or fraudulent,

7 “(C) is presented for a physician’s service (or an
8 item or service incident to a physician’s service) by a
9 person who knows or has reason to know that the indi-
10 vidual who furnished (or supervised the furnishing of)
11 the service—

12 “(i) was not licensed as a physician,

13 “(ii) was licensed as a physician, but such
14 license had been obtained through a misrepresen-
15 tation of material fact (including cheating on an
16 examination required for licensing), or

17 “(iii) represented to the patient at the time
18 the service was furnished that the physician was
19 certified in a medical specialty by a medical spe-
20 cialty board when the individual was not so certi-
21 fied, or

22 “(D) is for a medical or other item or service fur-
23 nished during a period in which the person was ex-
24 cluded under the program under which the claim was
25 made pursuant to a determination by the Secretary

1 *under this section or under section 1128, 1156,*
 2 *1160(b) (as in effect on September 2, 1982), 1862(d)*
 3 *(as in effect on the date of the enactment of the Medi-*
 4 *care and Medicaid Patient and Program Protection*
 5 *Act of 1987), or 1866(b); or”.*

6 *(2) Section 1128A(a)(2) is amended—*

7 *(A) in subparagraph (B) by inserting “(or other*
 8 *requirement of a State plan under title XIX)” after*
 9 *“State agency”, and*

10 *(B) by inserting at the end “or (D) an agreement*
 11 *pursuant to section 1866(a)(1)(G), or”.*

12 *(3) Subsection (a) of section 1128A is further*
 13 *amended—*

14 *(A) by inserting after paragraph (2) and before*
 15 *the end matter of such subsection the following new*
 16 *paragraph:*

17 *“(3) gives to any person, with respect to coverage*
 18 *under title XVIII of inpatient hospital services subject*
 19 *to the provisions of section 1886, information that he*
 20 *knows or has reason to know is false or misleading,*
 21 *and that could reasonably be expected to influence the*
 22 *decision when to discharge such person or another indi-*
 23 *vidual from the hospital;”, and*

24 *(B) in the matter following paragraph (3)—*

1 (i) by inserting “(or, in cases under para-
 2 graph (3), \$15,000 for each individual with re-
 3 spect to whom false or misleading information
 4 was given)” before the period at the end of the
 5 first sentence, and

6 (ii) by adding at the end thereof the follow-
 7 ing new sentence: “In addition the Secretary may
 8 make a determination in the same proceeding to
 9 exclude the person from participation in the pro-
 10 grams under title XVIII and to direct the appro-
 11 priate State agency to exclude the person from
 12 participation in any State health care program.”.

13 (b) *STATUTE OF LIMITATION ON ACTIONS.*—Subsec-
 14 tion (c)(1) of section 1128A (as redesignated by section
 15 9313(c)(1)(D) of the Omnibus Budget Reconciliation Act of
 16 1986) is amended by adding at the end the following new
 17 sentences: “The Secretary may not initiate an action under
 18 this section with respect to any claim later than six years
 19 after the date the claim was presented. The Secretary may
 20 initiate an action under this section by serving notice of the
 21 action in any manner authorized by Rule 4 of the Federal
 22 Rules of Civil Procedure.”.

23 (c) *CONFORMING AMENDMENT.*—Subsections (c), (d),
 24 (g), and (h) of section 1128A are each amended by striking

1 *“penalty or assessment” and inserting “penalty, assessment,*
 2 *or exclusion” each place it appears.*

3 (d) *PRO-RATED PAYMENT OF RECOVERIES TO*
 4 *STATE AGENCIES.—Subsection (f)(1)(A) of section 1128A*
 5 *is amended by striking “equal to the State’s share of the*
 6 *amount paid by the State agency” and inserting “bearing the*
 7 *same proportion to the total amount recovered as the State’s*
 8 *share of the amount paid by the State agency for such claim*
 9 *bears to the total amount paid”.*

10 (e) *NOTICE TO STATE AGENCIES.—Subsection (h) of*
 11 *section 1128A is further amended by inserting “the appropri-*
 12 *ate State agency or agencies administering or supervising the*
 13 *administration of State health care programs (as defined in*
 14 *section 1128(h)),” after “professional organization,”.*

15 (f) *APPLICATION OF SUBPOENA POWER AND INJUNC-*
 16 *TIVE POWERS.—Section 1128A is further amended by*
 17 *adding at the end the following new subsections:*

18 *“(j) The provisions of subsections (d) and (e) of section*
 19 *205 shall apply with respect to this section to the same extent*
 20 *as they are applicable with respect to title II. The Secretary*
 21 *may delegate the authority granted by section 205(d) (as*
 22 *made applicable to this section) to the Inspector General of*
 23 *the Department of Health and Human Services for purposes*
 24 *of any investigation under this section.*

1 “(k) Whenever the Secretary has reason to believe that
 2 any person has engaged, is engaging, or is about to engage in
 3 any activity which makes the person subject to a civil mone-
 4 tary penalty under this section, the Secretary may bring an
 5 action in an appropriate district court of the United States
 6 (or, if applicable, a United States court of any territory) to
 7 enjoin such activity, or to enjoin the person from concealing,
 8 removing, encumbering, or disposing of assets which may be
 9 required in order to pay a civil monetary penalty if any such
 10 penalty were to be imposed or to seek other appropriate
 11 relief.”.

12 **SEC. 4. CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE**
 13 **AND STATE HEALTH CARE PROGRAMS.**

14 (a) **TECHNICAL AMENDMENTS.**—Section 1909 (42
 15 U.S.C. 1396h) is amended—

16 (1) by amending the heading to read as follows:
 17 “**CRIMINAL PENALTIES FOR ACTS INVOLVING MEDICARE**
 18 **OR STATE HEALTH CARE PROGRAMS**”;

19 (2) in subsection (a)(1), by striking “a State plan
 20 approved under this title” and inserting “a program
 21 under title XVIII or a State health care program (as
 22 defined in section 1128(h))”;

23 (3) in the matter in subsection (a) following para-
 24 graph (4), by striking “this title” the first place it ap-
 25 pears and inserting “the program”;

(4) in the last sentence of subsection (a), by striking “this title” the first place it appears and inserting “title XIX”, and by striking “this title” the second place it appears and inserting “that title”;

(5) in paragraphs (1)(A), (1)(B), (2)(A), (2)(B), and (3)(A) of subsection (b), by striking “this title” and inserting “title XVIII or a State health care program” each place it appears;

(6) in subsection (b)(3)—

(A) by striking “and” at the end of subparagraph (A),

(B) by striking the period at the end of subparagraph (B) and inserting “; and”, and

(C) by adding at the end the following:

“(C) any amount paid by a vendor of goods or services to a person authorized to act as a purchasing agent for a group of individuals or entities who are furnishing services reimbursed under title XVIII or a State health care program if—

“(i) the person has a written contract, with each such individual or entity, which specifies the amount to be paid the person, which amount may be a fixed amount or a fixed percentage of the value of the purchases made by each such individual or entity under the contract, and

1 “(ii) in the case of an entity that is a provid-
 2 er of services (as defined in section 1861(u)), the
 3 person discloses (in such form and manner as the
 4 Secretary requires) to the entity and, upon re-
 5 quest, to the Secretary the amount received from
 6 each such vendor with respect to purchases made
 7 by or on behalf of the entity.”;

8 (7) in subsection (c), by striking “or home health
 9 agency (as those terms are employed in this title)” and
 10 inserting “home health agency, or other entity for
 11 which certification is required under title XVIII or a
 12 State health care program”; and

13 (8) in subsection (d), by striking “this title” and
 14 inserting “title XIX” each place it appears.

15 (b) *CRIMINAL PENALTIES FOR PHYSICIAN MISREP-*
 16 *RESENTATIONS.*—Subsection (a) of such section is further
 17 amended—

18 (1) by striking “or” at the end of paragraph (3),
 19 (2) by inserting “or” at the end of paragraph (4),
 20 and

21 (3) by inserting after paragraph (4) the following
 22 new paragraph:

23 “(5) presents or causes to be presented a claim for
 24 a physician’s service for which payment may be made
 25 under a program under title XVIII or a State health

1 *care program and knows that the individual who fur-*
 2 *nished the service was not licensed as a physician,”.*

3 *(c) REDESIGNATION OF SECTION 1877(d) AS SEC-*
 4 *TION 1128B(e).—Subsection (d) of section 1877 (42 U.S.C.*
 5 *1395nn) is redesignated as subsection (e) and is transferred*
 6 *and inserted in section 1909 at the end thereof.*

7 *(d) REDESIGNATION OF SECTION 1909 AS SECTION*
 8 *1128B.—Section 1909, as amended by subsections (a), (b),*
 9 *and (c) of this section, is redesignated as section 1128B and*
 10 *is transferred to title XI and inserted immediately after sec-*
 11 *tion 1128A.*

12 *(e) REPEAL.—Section 1877 (other than subsection (d)*
 13 *thereof which was transferred under subsection (c) of this sec-*
 14 *tion) is repealed.*

15 **SEC. 5. INFORMATION CONCERNING SANCTIONS TAKEN BY**
 16 **STATE LICENSING AUTHORITIES AGAINST**
 17 **HEALTH CARE PRACTITIONERS AND PROVIDERS.**

18 *(a) MEDICAID PLAN REQUIREMENT.—Section*
 19 *1902(a) (42 U.S.C. 1396a(a)) is amended—*

20 *(1) by striking “and” at the end of paragraph*
 21 *(46),*

22 *(2) by striking the period at the end of the para-*
 23 *graph (47) added by section 9407(a) of the Omnibus*
 24 *Budget Reconciliation Act of 1986 and inserting a*

1 *semicolon and transferring and inserting such para-*
 2 *graph after paragraph (46),*

3 *(3) by striking the period at the end of the para-*
 4 *graph (47) added by section 11005(b) of the Anti-Drug*
 5 *Abuse Act of 1986 and inserting “; and”, by redesign-*
 6 *ating such paragraph as paragraph (48), and by*
 7 *transferring and inserting such paragraph after para-*
 8 *graph (47), and*

9 *(4) by inserting after paragraph (48) the follow-*
 10 *ing new paragraph:*

11 *“(49) provide that the State will provide informa-*
 12 *tion and access to certain information respecting sanc-*
 13 *tions taken against health care practitioners and pro-*
 14 *viders by State licensing authorities in accordance*
 15 *with section 1921.”.*

16 *(b) INFORMATION REQUIRED.—Title XIX is amended*
 17 *by redesignating section 1921 as section 1922 and inserting*
 18 *after section 1920 the following new section:*

19 *“INFORMATION CONCERNING SANCTIONS TAKEN BY*
 20 *STATE LICENSING AUTHORITIES AGAINST HEALTH*
 21 *CARE PRACTITIONERS AND PROVIDERS*

22 *“SEC. 1921. (a) INFORMATION REPORTING RE-*
 23 *QUIREMENT.—The requirement referred to in section*
 24 *1902(a)(49) is that the State must provide for the following:*

25 *“(1) INFORMATION REPORTING SYSTEM.—The*
 26 *State must have in effect a system of reporting the fol-*

1 *lowing information with respect to formal proceedings*
2 *(as defined by the Secretary in regulations) concluded*
3 *against a health care practitioner or entity by any au-*
4 *thority of the State (or of a political subdivision there-*
5 *of) responsible for the licensing of health care practi-*
6 *tioners or entities:*

7 *“(A) Any adverse action taken by such li-*
8 *censing authority as a result of the proceeding, in-*
9 *cluding any revocation or suspension of a license*
10 *(and the length of any such suspension), repri-*
11 *mand, censure, or probation.*

12 *“(B) Any dismissal or closure of the proceed-*
13 *ings by reason of the practitioner or entity surren-*
14 *dering the license or leaving the State or juris-*
15 *diction.*

16 *“(C) Any other loss of the license of the*
17 *practitioner or entity, whether by operation of*
18 *law, voluntary surrender, or otherwise.*

19 *“(2) ACCESS TO DOCUMENTS.—The State must*
20 *provide the Secretary (or an entity designated by the*
21 *Secretary) with access to such documents of the au-*
22 *thority described in paragraph (1) as may be necessary*
23 *for the Secretary to determine the facts and circum-*
24 *stances concerning the actions and determinations de-*

1 scribed in such paragraph for the purpose of carrying
2 out this Act.

3 “(b) *FORM OF INFORMATION.*—The information de-
4 scribed in subsection (a)(1) shall be provided to the Secretary
5 (or to an appropriate private or public agency, under suitable
6 arrangements made by the Secretary with respect to receipt,
7 storage, protection of confidentiality, and dissemination of in-
8 formation) in such a form and manner as the Secretary de-
9 termines to be appropriate in order to provide for activities of
10 the Secretary under this Act and in order to provide, directly
11 or through suitable arrangements made by the Secretary, in-
12 formation—

13 “(1) to agencies administering Federal health care
14 programs, including private entities administering such
15 programs under contract,

16 “(2) to licensing authorities described in subsec-
17 tion (a)(1),

18 “(3) to State agencies administering or supervis-
19 ing the administration of State health care programs
20 (as defined in section 1128(h)),

21 “(4) to utilization and quality control peer review
22 organizations described in part B of title XI and to
23 appropriate entities with contracts under section
24 1154(a)(4)(C) with respect to eligible organizations re-
25 viewed under the contracts,

1 “(5) to State medicaid fraud control units (as de-
2 fined in section 1903(q)),

3 “(6) to hospitals and other health care entities (as
4 defined in section 431 of the Health Care Quality Im-
5 provement Act of 1986), with respect to physicians or
6 other licensed health care practitioners that have en-
7 tered (or may be entering) into an employment or af-
8 filiation relationship with, or have applied for clinical
9 privileges or appointments to the medical staff of, such
10 hospitals or other health care entities (and such infor-
11 mation shall be deemed to be disclosed pursuant to sec-
12 tion 427 of, and be subject to the provisions of, that
13 Act),

14 “(7) to the Attorney General and such other law
15 enforcement officials as the Secretary deems appropri-
16 ate, and

17 “(8) upon request, to the Comptroller General,
18 in order for such authorities to determine the fitness of indi-
19 viduals to provide health care services, to protect the health
20 and safety of individuals receiving health care through such
21 programs, and to protect the fiscal integrity of such programs.

22 “(c) *CONFIDENTIALITY OF INFORMATION PROVID-*
23 *ED.*—The Secretary shall provide for suitable safeguards for
24 the confidentiality of the information furnished under subsec-
25 tion (a). Nothing in this subsection shall prevent the disclo-

1 sure of such information by a party which is otherwise au-
 2 thorized, under applicable State law, to make such dis-
 3 closure.

4 “(d) *APPROPRIATE COORDINATION.*—The Secretary
 5 shall provide for the maximum appropriate coordination in
 6 the implementation of subsection (a) of this section and sec-
 7 tion 422 of the Health Care Quality Improvement Act of
 8 1986.”

9 **SEC. 6. OBLIGATION OF HEALTH CARE PRACTITIONERS AND**
 10 **PROVIDERS.**

11 Section 1156 (42 U.S.C. 1320c-5) is amended—

12 (1) by striking “title XVIII” and “such title” in
 13 subsection (a) and inserting “this Act” in each in-
 14 stance, and

15 (2) by striking “title XVIII” in subsection (b)
 16 and inserting “this Act” each place it appears.

17 **SEC. 7. EXCLUSION UNDER THE MEDICAID PROGRAM.**

18 Section 1902 (42 U.S.C. 1396b) is amended by redes-
 19 ignating the subsection (l) added by section 3(b) of the Em-
 20 ployment Opportunities for Disabled Americans Act as sub-
 21 section (o) and by inserting after such subsection the follow-
 22 ing new subsection:

23 “(p)(1) In addition to any other authority, a State may
 24 exclude any individual or entity for purposes of participating
 25 under the State plan under this title for any reason for which

1 *the Secretary could exclude the individual or entity from par-*
 2 *ticipation in a program under title XVIII under section*
 3 *1128, 1128A, or 1866(b)(2).*

4 “(2) *In order for a State to receive payments for medi-*
 5 *cal assistance under section 1903(a), with respect to pay-*
 6 *ments the State makes to a health maintenance organization*
 7 *(as defined in section 1903(m)) or to an entity furnishing*
 8 *services under a waiver approved under section 1915(b)(1),*
 9 *the State must provide that it will exclude from participation,*
 10 *as such an organization or entity, any organization or entity*
 11 *that—*

12 “(A) *could be excluded under section 1128(b)(8)*
 13 *(relating to owners and managing employees who have*
 14 *been convicted of certain crimes or received other sanc-*
 15 *tions), or*

16 “(B) *has, directly or indirectly, a substantial con-*
 17 *tractual relationship (as defined by the Secretary) with*
 18 *an individual or entity that is described in section*
 19 *1128(b)(8)(B).*

20 “(3) *As used in this subsection, the term ‘exclude’ in-*
 21 *cludes the refusal to enter into or renew a participation agree-*
 22 *ment or the termination of such an agreement.’.*

23 **SEC. 8. MISCELLANEOUS AND CONFORMING AMENDMENTS.**

24 (a) **MATERNAL AND CHILD HEALTH PROGRAM.—**
 25 *Section 504(b) (42 U.S.C. 704(b)) is amended—*

1 (1) *by striking “or” at the end of paragraph (4),*

2 (2) *by striking the period at the end of paragraph*

3 (5) *and inserting “; or”, and*

4 (3) *by adding at the end thereof the following new*
5 *paragraph:*

6 “*(6) payment for any item or service (other than*
7 *an emergency item or service) furnished—*

8 “*(A) by an individual or entity during the*
9 *period when such individual or entity is excluded*
10 *pursuant to section 1128 or section 1128A from*
11 *participation in the program under this title, or*

12 “*(B) at the medical direction or on the pre-*
13 *scription of a physician during the period when*
14 *the physician is excluded pursuant to section*
15 *1128 or section 1128A from participation in the*
16 *program under this title and when the person fur-*
17 *nishing such item or service knew or had reason*
18 *to know of the exclusion (after a reasonable time*
19 *period after reasonable notice has been furnished*
20 *to the person).”.*

21 (b) *DISCLOSURE REQUIREMENTS.—(1) Subsection*
22 (a) *of section 1126 (42 U.S.C. 1320a-5) is amended—*

23 (A) *in the first sentence, by striking “or other in-*
24 *stitution” and all that follows through the period at the*
25 *end and inserting “or other entity (other than an indi-*

1 *vidual practitioner or group of practitioners) shall be*
 2 *required to disclose to the Secretary or to the appropri-*
 3 *ate State agency the name of any person that is a*
 4 *person described in subparagraphs (A) and (B) of sec-*
 5 *tion 1128(b)(8).”, and*

6 *(B) in the second sentence, by striking “institu-*
 7 *tion, organization, or agency” and inserting “entity”.*

8 *(2) Subsection (b) of such section is amended by strik-*
 9 *ing “institution, organization, or agency” and inserting*
 10 *“entity” each place it appears.*

11 *(c) MEDICARE PAYMENTS.—(1) Section 1862 (42*
 12 *U.S.C. 1395y) is amended—*

13 *(A) by repealing subsection (d), and*

14 *(B) by amending subsection (e) to read as follows:*

15 *“(e) No payment may be made under this title with re-*
 16 *spect to any item or service (other than an emergency item or*
 17 *service) furnished—*

18 *“(1) by an individual or entity during the period*
 19 *when such individual or entity is excluded pursuant to*
 20 *section 1128 or section 1128A from participation in*
 21 *the program under this title; or*

22 *“(2) at the medical direction or on the prescrip-*
 23 *tion of a physician during the period when he is ex-*
 24 *cluded pursuant to section 1128 or section 1128A from*
 25 *participation in the program under this title and when*

1 *the person furnishing such item or service knew or had*
 2 *reason to know of the exclusion (after a reasonable*
 3 *time period after reasonable notice has been furnished*
 4 *to the person).”.*

5 (2) Section 1842(j) (42 U.S.C. 1395u(j)) is amend-
 6 ed—

7 (A) in paragraph (2)—

8 (i) by amending subparagraph (A) to read as
 9 follows:

10 “(A) excluding a physician from participation in
 11 the programs under this title for a period not to exceed
 12 5 years, in accordance with the procedures of subsec-
 13 tions (c), (f), and (g) of section 1128, or”, and

14 (ii) by striking “barred from participation in
 15 the program” in the second sentence and inserting
 16 “excluded from participation in the programs”;
 17 and

18 (B) by striking “bar” in paragraph (3)(A) and
 19 inserting “exclude”.

20 (3) Section 1862(h)(4) (42 U.S.C. 1395y(h)(4)) is
 21 amended by striking “paragraphs (2) and (3) of subsection
 22 (d)” and inserting “subsections (c), (f), and (g) of section
 23 1128”.

24 (4) Paragraph (3) of section 1886(f) (42 U.S.C.
 25 1395ww(f)) is amended to read as follows:

1 “(3) *The provisions of subsections (c) through (g) of sec-*
 2 *tion 1128 shall apply to determinations made under para-*
 3 *graph (2) in the same manner as they apply to exclusions*
 4 *effected under section 1128(b)(13).”.*

5 (d) *TERMINATION OF PROVIDER AGREEMENTS*
 6 *UNDER MEDICARE.—Section 1866 (42 U.S.C. 1395cc) is*
 7 *amended—*

8 (1) *in subsection (a)—*

9 (A) *by striking paragraph (3), and*

10 (B) *by redesignating paragraph (4) as para-*
 11 *graph (3);*

12 (2) *by amending subsection (b) to read as follows:*

13 “(b)(1) *A provider of services may terminate an agree-*
 14 *ment with the Secretary under this section at such time and*
 15 *upon such notice to the Secretary and the public as may be*
 16 *provided in regulations, except that notice of more than six*
 17 *months shall not be required.*

18 “(2) *The Secretary may refuse to enter into an agree-*
 19 *ment under this section or, upon such reasonable notice to the*
 20 *provider and the public as may be specified in regulations,*
 21 *may refuse to renew or may terminate such an agreement*
 22 *after the Secretary—*

23 “(A) *has determined that the provider fails to*
 24 *comply substantially with the provisions of the agree-*
 25 *ment, with the provisions of this title and regulations*

1 *thereunder, or with a corrective action required under*
 2 *section 1886(f)(2)(B),*

3 *“(B) has determined that the provider fails sub-*
 4 *stantially to meet the applicable provisions of section*
 5 *1861, or*

6 *“(C) has excluded the provider from participation*
 7 *in a program under this title pursuant to section 1128*
 8 *or section 1128A.*

9 *“(3) A termination of an agreement or a refusal to*
 10 *renew an agreement under this subsection shall become effec-*
 11 *tive on the same date and in the same manner as an exclu-*
 12 *sion from participation under the programs under this title*
 13 *becomes effective under section 1128(c).”;*

14 *(3) in paragraphs (1) and (3) of subsection (c), by*
 15 *striking “an agreement filed under this title by a pro-*
 16 *vider of services has been terminated by the Secretary”*
 17 *and inserting “the Secretary has terminated or has re-*
 18 *fused to renew an agreement under this title with a*
 19 *provider of services”;*

20 *(4) by inserting “or nonrenewal” in subsection (c)*
 21 *after “termination” each place it appears; and*

22 *(5) by adding at the end the following new subsec-*
 23 *tion:*

24 *“(h)(1) Except as provided in paragraph (2), an institu-*
 25 *tion or agency dissatisfied with a determination by the Secre-*

1 (2) Paragraph (2) of section 1915(a) (42 U.S.C.
2 1396n(a)) is amended to read as follows:

3 “(2) restricts for a reasonable period of time the provider
4 or providers from which an individual (eligible for medical
5 assistance for items or services under the State plan) can
6 receive such items or services, if—

7 “(A) the State has found, after notice and
8 opportunity for a hearing (in accordance with pro-
9 cedures established by the State), that the individ-
10 ual has utilized such items or services at a fre-
11 quency or amount not medically necessary (as de-
12 termined in accordance with utilization guidelines
13 established by the State), and

14 “(B) under such restriction, individuals eli-
15 gible for medical assistance for such services have
16 reasonable access (taking into account geographic
17 location and reasonable travel time) to such serv-
18 ices of adequate quality.”.

19 (i) TITLE XX.—Section 2005(a) (42 U.S.C.
20 1397d(a)) is amended—

21 (1) by striking “or” at the end of paragraph (7),

22 (2) by striking the period at the end of paragraph

23 (8) and inserting “; or”, and

24 (3) by adding at the end thereof the following new
25 paragraph:

1 “(9) for payment for any item or service (other
2 than an emergency item or service) furnished—

3 “(A) by an individual or entity during the
4 period when such individual or entity is excluded
5 pursuant to section 1128 or section 1128A from
6 participation in the program under this title, or

7 “(B) at the medical direction or on the pre-
8 scription of a physician during the period when
9 the physician is excluded pursuant to section
10 1128 or section 1128A from participation in the
11 program under this title and when the person fur-
12 nishing such item or service knew or had reason
13 to know of the exclusion (after a reasonable time
14 period after reasonable notice has been furnished
15 to the person).”.

16 (j) DENIAL, REVOCATION, OR SUSPENSION OF REG-
17 ISTRATION TO MANUFACTURE, DISTRIBUTE, OR DIS-
18 PENSE A CONTROLLED SUBSTANCE FOR ENTITIES EX-
19 CLUDED FROM THE MEDICARE PROGRAM.—Section
20 304(a) of the Controlled Substances Act (21 U.S.C. 824(a))
21 is amended—

22 (1) by striking “or” at the end of paragraph (3),

23 (2) by striking the period at the end of paragraph

24 (4) and inserting “; or”, and

1 (2) Paragraph (2) of section 1915(a) (42 U.S.C.
2 1396n(a)) is amended to read as follows:

3 “(2) restricts for a reasonable period of time the provider
4 or providers from which an individual (eligible for medical
5 assistance for items or services under the State plan) can
6 receive such items or services, if—

7 “(A) the State has found, after notice and
8 opportunity for a hearing (in accordance with pro-
9 cedures established by the State), that the individ-
10 ual has utilized such items or services at a fre-
11 quency or amount not medically necessary (as de-
12 termined in accordance with utilization guidelines
13 established by the State), and

14 “(B) under such restriction, individuals eli-
15 gible for medical assistance for such services have
16 reasonable access (taking into account geographic
17 location and reasonable travel time) to such serv-
18 ices of adequate quality.”.

19 (i) TITLE XX.—Section 2005(a) (42 U.S.C.
20 1397d(a)) is amended—

21 (1) by striking “or” at the end of paragraph (7),

22 (2) by striking the period at the end of paragraph

23 (8) and inserting “; or”, and

24 (3) by adding at the end thereof the following new
25 paragraph:

1 “(9) for payment for any item or service (other
2 than an emergency item or service) furnished—

3 “(A) by an individual or entity during the
4 period when such individual or entity is excluded
5 pursuant to section 1128 or section 1128A from
6 participation in the program under this title, or

7 “(B) at the medical direction or on the pre-
8 scription of a physician during the period when
9 the physician is excluded pursuant to section
10 1128 or section 1128A from participation in the
11 program under this title and when the person fur-
12 nishing such item or service knew or had reason
13 to know of the exclusion (after a reasonable time
14 period after reasonable notice has been furnished
15 to the person).”.

16 (j) DENIAL, REVOCATION, OR SUSPENSION OF REG-
17 ISTRATION TO MANUFACTURE, DISTRIBUTE, OR DIS-
18 PENSE A CONTROLLED SUBSTANCE FOR ENTITIES EX-
19 CLUDED FROM THE MEDICARE PROGRAM.—Section
20 304(a) of the Controlled Substances Act (21 U.S.C. 824(a))
21 is amended—

22 (1) by striking “or” at the end of paragraph (3),

23 (2) by striking the period at the end of paragraph

24 (4) and inserting “; or”, and

1 (3) by inserting after paragraph (4) the following
2 new paragraph:

3 “(5) has been excluded (or directed to be ex-
4 cluded) from participation in a program pursuant to
5 section 1128(a) of the Social Security Act.”.

6 **SEC. 9. CLARIFICATION OF MEDICAID MORATORIUM PROVI-**
7 **SIONS OF DEFICIT REDUCTION ACT OF 1984.**

8 Section 2373(c) of the Deficit Reduction Act of 1984
9 (Public Law 98-369; 98 Stat. 1112) is amended to read as
10 follows:

11 “(c)(1) The Secretary of Health and Human Services
12 shall not take any compliance, disallowance, penalty, or other
13 regulatory action against a State with respect to the morato-
14 rium period described in paragraph (2) by reason of such
15 State’s plan described in paragraph (5) under title XIX of
16 the Social Security Act (including any part of the plan oper-
17 ating pursuant to section 1902(f) of such Act), or the oper-
18 ation thereunder, being determined to be in violation of
19 clause (IV), (V), or (VI) of section 1902(a)(10)(A)(ii) or sec-
20 tion 1902(a)(10)(C)(i)(III) of such Act on account of such
21 plan’s (or its operation) having a standard or methodology
22 which the Secretary interprets as being less restrictive than
23 the standard or methodology required under such section, pro-
24 vided that such plan (or its operation) does not make ineligi-

1 *ble any individual who would be eligible but for the provi-*
 2 *sions of this subsection.*

3 “(2) *The moratorium period is the period beginning on*
 4 *October 1, 1981, and ending 18 months after the date on*
 5 *which the Secretary submits the report required under para-*
 6 *graph (3).*

7 “(3) *The Secretary shall report to the Congress within*
 8 *12 months after the date of the enactment of this Act with*
 9 *respect to the appropriateness, and impact on States and re-*
 10 *cipients of medical assistance, of applying standards and*
 11 *methodologies utilized in cash assistance programs to those*
 12 *recipients of medical assistance who do not receive cash as-*
 13 *sistance, and any recommendations for changes in such*
 14 *requirements.*

15 “(4) *No provision of law shall repeal or suspend the*
 16 *moratorium imposed by this subsection unless such provision*
 17 *specifically amends or repeals this subsection.*

18 “(5) *In this subsection, a State plan is considered to*
 19 *include—*

20 “(A) *any amendment or other change in the plan*
 21 *which is submitted by a State, or*

22 “(B) *any policy or guideline delineated in the*
 23 *Medicaid operation or program manuals of the State*
 24 *which are submitted by the State to the Secretary,*

1 *whether before or after the date of enactment of this Act and*
 2 *whether or not the amendment or change, or the operating or*
 3 *program manual was approved, disapproved, acted upon, or*
 4 *not acted upon by the Secretary.*

5 “(6) During the moratorium period, the Secretary shall
 6 implement (and shall not change by any administrative
 7 action) the policy in effect at the beginning of such moratori-
 8 um period with respect to—

9 “(A) the point in time at which an institutional-
 10 ized individual must sell his home (in order that it not
 11 be counted as a resource); and

12 “(B) the time period allowed for sale of a home of
 13 any such individual,
 14 who is an applicant for or recipient of medical assistance
 15 under the State plan as a medically needy individual (de-
 16 scribed in section 1902(a)(10)(C) of the Social Security Act)
 17 or as an optional categorically needy individual (described in
 18 section 1902(a)(10)(A)(ii) of such Act).”.

19 **SEC. 10. LIMITATION OF LIABILITY OF MEDICARE BENEFICI-**
 20 **ARIES WITH RESPECT TO SERVICES FURNISHED**
 21 **BY EXCLUDED INDIVIDUALS AND ENTITIES.**

22 Title XVIII is amended by adding at the end the fol-
 23 lowing new section:

1 *“LIMITATION OF LIABILITY OF BENEFICIARIES WITH RE-*
2 *SPECT TO SERVICES FURNISHED BY EXCLUDED IN-*
3 *DIVIDUALS AND ENTITIES*

4 *“SEC. 1890. Where an individual eligible for benefits*
5 *under this title submits a claim for payment for items or*
6 *services furnished by an individual or entity excluded from*
7 *participation in the programs under this title, pursuant to*
8 *section 1128, 1128A, 1156, 1160 (as in effect on September*
9 *2, 1982), 1862(d) (as in effect on the date of the enactment of*
10 *the Medicare and Medicaid Patient and Program Protection*
11 *Act of 1987), or 1866, and such beneficiary did not know or*
12 *have reason to know that such individual or entity was so*
13 *excluded, then, to the extent permitted by this title, and not-*
14 *withstanding such exclusion, payment shall be made for such*
15 *items or services. In each such case the Secretary shall notify*
16 *the beneficiary of the exclusion of the individual or entity*
17 *furnishing the items or services. Payment shall not be made*
18 *for items or services furnished by an excluded individual or*
19 *entity to a beneficiary after a reasonable time (as determined*
20 *by the Secretary in regulations) after the Secretary has noti-*
21 *fied the beneficiary of the exclusion of that individual or*
22 *entity.”.*

1 **SEC. 11. DEFINITION OF PERSON WITH OWNERSHIP OR CON-**
 2 **TROL INTEREST.**

3 *Section 1124(a)(3)(A)(ii) (42 U.S.C. 1320a-*
 4 *3(a)(3)(A)(ii)) is amended by striking "\$25,000 or".*

5 **SEC. 12. CONDITIONAL APPROVAL OF RENAL DIALYSIS FACILI-**
 6 **TIES.**

7 *Section 1881 (42 U.S.C. 1395rr) is amended by*
 8 *adding at the end the following new subsection:*

9 *"(h)(1) In any case where the Secretary—*

10 *"(A) finds that a renal dialysis facility is not in*
 11 *substantial compliance with requirements for such fa-*
 12 *cilities prescribed under subsection (b)(1)(A),*

13 *"(B) finds that the facility's deficiencies do not*
 14 *immediately jeopardize the health and safety of pa-*
 15 *tients, and*

16 *"(C) has given the facility a reasonable opportu-*
 17 *nity to correct its deficiencies,*

18 *the Secretary may, in lieu of terminating approval of the*
 19 *facility, determine that payment under this title shall be*
 20 *made to the facility only for services furnished to individuals*
 21 *who were patients of the facility before the effective date of the*
 22 *notice.*

23 *"(2) The Secretary's decision to restrict payments*
 24 *under this subsection shall be made effective only after such*
 25 *notice to the public and to the facility as may be prescribed in*
 26 *regulations, and shall remain in effect until (A) the Secre-*

1 tary finds that the facility is in substantial compliance with
 2 the requirements under subsection (b)(1)(A), or (B) the Sec-
 3 retary terminates the agreement under this title with the
 4 facility.

5 “(3) A facility dissatisfied with a determination by the
 6 Secretary under paragraph (1) shall be entitled to a hearing
 7 thereon by the Secretary (after reasonable notice) to the same
 8 extent as is provided in section 205(b), and to judicial review
 9 of the Secretary’s final decision after such hearing as is pro-
 10 vided in section 205(g).”

11 **SEC. 13. AMENDMENT RELATING TO FRAUD INVOLVING MEDI-**
 12 **CARE SUPPLEMENTAL INSURANCE.**

13 Section 1882(d)(1) (42 U.S.C. 1395ss(d)(1)) is
 14 amended by striking “knowingly or willfully” and inserting
 15 “knowingly and willfully”.

16 **SEC. 14. STANDARDS FOR ANTI-KICKBACK PROVISIONS.**

17 (a) **REGULATIONS.**—The Secretary of Health and
 18 Human Services, in consultation with the Attorney General,
 19 not later than 1 year after the date of the enactment of this
 20 Act shall publish proposed regulations, and not later than 2
 21 years after the date of the enactment of this Act shall promul-
 22 gate final regulations, specifying payment practices that shall
 23 not be treated as a criminal offense under section 1128B(b)
 24 of the Social Security Act and shall not serve as the basis for
 25 an exclusion under section 1128(b)(7) of such Act. Any prac-

1 *tices specified in regulations pursuant to the preceding sen-*
 2 *tence shall be in addition to the practices described in sub-*
 3 *paragraphs (A) through (C) of section 1128B(b)(3).*

4 *(b) CRIMINAL VIOLATION.—Section 1128B(b)(3), as*
 5 *amended and redesignated by section 4 of this Act, is further*
 6 *amended—*

7 *(1) by striking “and” at the end of subparagraph*
 8 *(B),*

9 *(2) by striking the period at the end of subpara-*
 10 *graph (C) and inserting “; and”, and*

11 *(3) by adding at the end thereof the following new*
 12 *subparagraph:*

13 *“(D) any payment practice specified by the Secre-*
 14 *tary in regulations promulgated pursuant to section*
 15 *14(a) of the Medicare and Medicaid Patient and Pro-*
 16 *gram Protection Act of 1987.”.*

17 **SEC. 15. EFFECTIVE DATES.**

18 *(a) IN GENERAL.—Except as provided in subsections*
 19 *(b), (c), (d), and (e), the amendments made by this Act shall*
 20 *become effective at the end of the fourteen-day period begin-*
 21 *ning on the date of the enactment of this Act and shall not*
 22 *apply to administrative proceedings commenced before the*
 23 *end of such period.*

24 *(b) MANDATORY MINIMUM EXCLUSIONS APPLY PRO-*
 25 *SPECTIVELY.—Section 1128(c)(3)(B) of the Social Securi-*

1 *ty Act (as amended by this Act), which requires an exclusion*
 2 *of not less than five years in the case of certain exclusions,*
 3 *shall not apply to exclusions based on convictions occurring*
 4 *before the date of the enactment of this Act.*

5 (c) *EFFECTIVE DATE FOR CHANGES IN MEDICAID*
 6 *LAW.—(1) The amendments made by sections 5 and 8(f)*
 7 *apply (except as provided under paragraph (2)) to payments*
 8 *under title XIX of the Social Security Act for calendar*
 9 *quarters beginning more than thirty days after the date of the*
 10 *enactment of this Act, without regard to whether or not final*
 11 *regulations to carry out such amendment have been published*
 12 *by such date.*

13 (2) *In the case of a State plan for medical assistance*
 14 *under title XIX of the Social Security Act which the Secre-*
 15 *tary of Health and Human Services determines requires*
 16 *State legislation (other than legislation appropriating funds)*
 17 *in order for the plan to meet the additional requirements im-*
 18 *posed by the amendments made by this Act, the State plan*
 19 *shall not be regarded as failing to comply with the require-*
 20 *ments of such title solely on the basis of its failure to meet*
 21 *these additional requirements before the first day of the first*
 22 *calendar quarter beginning after the close of the first regular*
 23 *session of the State legislature that begins after the date of*
 24 *the enactment of this Act.*

1 (3) *Subsection (j) of section 1128A of the Social Secu-*
 2 *rity Act (as added by section 3(f) of this Act) takes effect on*
 3 *the date of the enactment of this Act.*

4 (d) *PHYSICIAN MISREPRESENTATIONS.—Clauses (ii)*
 5 *and (iii) of section 1128A(a)(1)(C) of the Social Security*
 6 *Act, as amended by section 3(a)(1)(F) of this Act, apply to*
 7 *claims presented for services performed on or after the effec-*
 8 *tive date specified in subsection (a), without regard to the*
 9 *date the misrepresentation of fact was made.*

10 (e) *CLARIFICATION OF MEDICAID MORATORIUM.—*
 11 *The amendments made by section 9 of this Act shall apply as*
 12 *though they were originally included in the enactment of sec-*
 13 *tion 2373(c) of the Deficit Reduction Act of 1984.*

14 (f) *TREATMENT OF CERTAIN DENIALS OF PAY-*
 15 *MENT.—For purposes of section 1128(b)(8)(B)(iii) of the*
 16 *Social Security Act (as amended by section 2 of this Act), a*
 17 *person shall be considered to have been excluded from partici-*
 18 *pation under a program under title XVIII if payment to the*
 19 *person has been denied under section 1862(d) of the Social*

- 1 *Security Act, as in effect before the effective date specified in*
- 2 *subsection (a).*

CMS Library
C2-07-13
7500 Security Blvd.
Baltimore, Maryland 21244

100TH CONGRESS
1ST SESSION

S. 661

[Report No. 100-109]

A BILL

To amend titles XI, XVIII, and XIX of the Social Security Act to protect beneficiaries under the health care programs of that Act from unfit health care practitioners, and otherwise to improve the antifraud provisions relating to those programs.

JULY 14 (legislative day, JUNE 23), 1987

Reported with an amendment

CMS LIBRARY



8 552521000 5608 3